B Group

~~Kabe Chahar~~ ~~vs~~ Dwr. 1, 2~~4~~4, 5-6 & 7 of 1943

File No. S. Dwr. 3/43

Legal **DEPARTMENT**

A **BRANCH**

Subject:- Suits — Dharwar.

Civil Suit No. 453 of 1942.

Sankappa Bharmappa Alur — Plff.

V/S

1) Kamsing Durgashing Pulanekar,

2) The Province of Bombay. --- Defts

P 35 = EK

File No. S. Dwr. 3/43

Std. Sectt. Slip 24-B

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Suits DWR

C.S.No.453 of 1942

Sankappa Bharmappa Alvr Versus Plff.

Versus

1) Ramsing Durgashing Pvlanekar.

2) The Province of Bombay Deft.

Letter. No. 168

Dharwar 20th March 1943.

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To

The Remembrancer of Legal Affairs,

Bombay,

Subject:-Dhar ar L.C.Suit No.453 of 1942.

Sir,

In accordance with Rule 118 of the Law Officers Rules, I have the honour to submit herewith chronological statement of facts, grounds of defence and draft written statement in triplicate along with the papers of this suit in files I to VI for favour of sanction of the defence of the suit.

1. The suit is numbered as Long Cause Civil Suit No.453 of 1942.
2. The suit has been filed in the court of the First Class Sub-Judg at Dharwar, on 24-10-1942.
3. Plff:- Sankappa Bharmappa Alur, age 35, caste Lingayat, occupati agriculture of Betgeri Taluka Gadag.

Vs.

Defts:-1 Ramsing Durgasing Phulani alias Rajput, age 45, caste Rajput, occupation trade of Betgeri Taluka Gadag for himself and on behalf of the Rajput community of - Betgeri, Gadag.

2. The Province of Bombay.

4. Notice of suit under section 80 of the C.P.C. appears to have been given to the Collector, and the acknowledgement of receipt of the notice has been produced by the plff in court. But was not found in the files, no defence has been formulated in respect of it.
5. The suit has been ~~fixed~~ fixed on —— — for putting in written statement on behalf of Government.

It is submitted, ~~that~~ therefore, that Government may kindly be moved to accord sanction to the defence of the suit with such additions and alterations at an early date.

Your obedient servant,

S R [illegible]

District Government Pleader.

Respectfully submitted through the Collector of Dharwar.

No.LAW. Dharwar, 23rd March 1943.

Forwarded with compliments.

SB.

Collector of Dharwar.

L.C.Suit No.453 of 1942.

In the Court of the First Class Sub-Judge,

at Dharwar.

CHRONOLOGICAL STATEMENT OF FACTS.

1. The suit is for a permanent injunction restraining deft from interfering with the right of way of plff to pass to his land City Survey No.6553/1 of Gadag - Betgeri of R.S.No.33, a portion of which bears City Survey No.6553/1 through City Survey No.6553/A along its southern boundary & (2) recovery of costs and other equitable reliefs:-

2. On 18th December 1922 certain Rajput inhabitants of Gadag-Betgeri, Taluka Gadag, District Dharwar, applied to the Collector of Dharwar for revenue-free grant of land belonging to Government, measuring 29 gunthas out of City S.No.6553 situate near the out-skirt of Betgeri town called the Huilgol Agasi for the purpose of building a Dharmashala, a temple and a Math for a Sadhu named Laxmansingh of their community, and a well for the use of the public.

P.1-6 file I
Map P.5 & 247 file I.

C.T.S.No.6553/A measuring 3267 Sq. yards as shown in the map at P.139.

3. On 28th June 1923, the Collector of Dharwar refused the application as the N.A. assessment was not to be paid by the applicants, and on 16-8-1924 ordered that unless the applicants agreed to pay N.A.assessment at the standard rate of Rs.50/- per acre, the application could not be considered.

P.35 file I

P.45 file Do.

4. On 15-12-1924, Sadhu Laxlansingh on behalf of the Rajput community appealed to the Commissioner S.D. Belgaum, against the above mentioned orders of the - Collector of Dharwar, dated 13th January 1925. The appeal was disallowed by the Commissioner.

P.47 file Do.

5. On 3-2-1925 Sadhu Laxmansingh applied to the Mamlatdar, Gadag, expressing his willingness to pay the N.A. assessment. On 7-3-1925 the Collector ordered grant of 29 gunthas of land in C.T.S.No.6553 of Betgeri on - payment of N.A. assessment at the standard rate, but free of occupancy price for building a Dharmashala, temple & well.

P.55 file Do.

Reverse of P.65 file Do.

6. On 24-4-1925 Bharrappa Mudkappa Alur the father of Alff and 3 other members of his family being owners of R.S. No.23 of Betgeri applied to the Collector of Dharwar praying for permission to sell C.T.S.No.6553 of Betgeri to themselves and not to the Rajput community, as the C.T.S.Nos.6553 adjoined their land and as the transfer of it to the Rajputs would adversely affect ther in the enjoyment of their land R.S.No.23 in particular their user of the Path-passage to the well and which watered their land for garden purposes, the Sadhu having constructed a hut near the Moat-Katta of the well. P.81-83 File I.

R.R. at P.183 shows R.S.No.23 to be 4 acres 29 gunthas, out of which garden land is 4 acres 3 gunthas which they claim to be of their ownership.

7. On 5-6-1925 the Mamlatdar, Gadag, requested the D.I.L.R.Dharwar, to report if R.S.No.23 was being irrigated by the well situated to the west of the C.T.S.No.6553. On 13-6-1925 the D.I.L.R. reported that from the survey record it appeared that the garden portion of R.S.No.23 was being irrigated from this well from a date prior to 1843. On reference to the Mamlatdar by the Collector, the Mamlatdar reported on 6-12-25 that the well was not in Rs. 23 of Betgeri. Reverse of P.185.

8. On 21-1-1926 Basappa Alur and others applied to the Mamlatdar, Gadag, complaining that Sadhu Laxmansing did not remove the hut. On 24-1-1926 the Mamlatdar replied to Basappa Alur that the land on the well belonged to Government and it would not be sold to them.

9. On 9-12-1925 the Mamlatdar, Gadag submitted a report to the Prant III Division stating that the well and the land containing it which has not been given to Laxmansingh, need not be sold to Bharmappa Alur and 3 others as prayed for in their application, observing that the land and the well ought to remain Government property, as it now is, that Basappa and Bharmappa Alur may have the right to use the water of the well if they have a right to do so. The Mamlatdar further recommended that a right of way over 27 gunthas of land granted to the Sadhu from the public road to the well will have to be reserved so that the public may make use of the well. The Mamlatdar also recommended that the condition of sinking a well by the Sadhu may be deleted as there was already another well closeby (i.e. Govt well mentioned above). On 15th December 1925 Sadhu Laxmansing made a statement before the Mamlatdar, Gadag, that he would remove the hut constructed by him on the Moat-Katta and that he would not obstruct Basappa Alur and others [illegible] that he would give a public

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ay to the well out of 67 gunthas granted to him.

10. Sadhu Laxmansingh having died subsequently on 23-2-1929, the Collector ordered the entry of the name of Ramsingh Durgasingh in place of deceased Laxmansingh Sadhu in respect of City S.No.6553 granted.

P.181.

11. On 2nd June 1930, Ramsingh applied to the Collector to exempt him from payment of lease rent which amounted to Rs.32-12-0 plus Rs.2-0-9 a year. The piece of land granted appears to have been given C.T.S. No.6553/2.

P.187 & 192 file I. Register of property P.201 file I.

12. On 25-7-1930 the D.D.C. recommended to the Collector that this was a fit case for exemption of N.A.assessment.

P.201 file I.

11. On 29th August 1930, the Collector ordered that the view of the Commissioner's order of 15th July 1925, he could not re-open the matter.

P.25 file I.

12. It appears that the land granted C.T.S. No.6553/2 was forfeited to Government for non-payment of N.A. assessment. But on 24th November 1930, the Collector cancelled the forfeiture and ordered restoration.

Reverse of P.227 file I.

13. On the 14th April 1931 Ramsing Durgasingh, on behalf of the Rajput community applied to the Commissioner S.D. praying for exempting the plot C.T.S. No.6553/2 from payment of N.A. Assessment. On 15th April 1931 Ramsing was asked by the Commissioner to approach the Collector.

P.235 file Do.

14. On 30th April 1932 the Collector accorded sanction to exempt C.T.S.No.6553 of Betgeri from the payment of assessment, so long no mischief was played nor any mischief mongers were allowed to resort there. The Collector ordered fresh Sanad to be prepared. On 26-8-1932 the Collector signed the sanad.

P.241 file Do.

Sanad at P.245 file Do. & map at P.247 file Do.

15. On 9th April 1934 Basappa Bharmappa Alur (the present plff) and Basappa Mudkappa Alur, applied to the Collector complaining that the Rajputs were encroaching upon this land, that they were disturbing the peaceful enjoyment and user by the petitioners of

P.1-6 file II.

the well which existed in their land R.S. No.23 and which irrigated their whole field (i.e.R.S. No.23) which was a garden land. On 17-4-1934 the Collector forwarded the above application to the Prant III Division for inquiry and report. And on 26-4-1934 the Prant III Division in turn forwarded it to the Mamlatdar for compliance.

16. On 9th July 1934 the Mamlatdar, Gadag, submitted in reply a report to the Prant III Division, as follows:-"There is a well in C.T.S.No.6553/1 of Betgeri which belongs to Govt. On the west of this there is R.S. No.23 which belongs to the applicants (i.e. plff's family). On the east there is C.T.S. No.6553/2 which has been granted to Ramsingh Rajput free of occupancy price and assessment for building a temple and Dharmashala. This plot (C.T.S. No.6553/2) measures 37 gunthas". The Mamlatdar recommended that the survey records showed that the land was being irrigated by the well C.T.S.No.6553/1, the plot on which the well stood and measured 696 Sr. yards should be sold to the plff's family and that Ramsing wrongfully brought under cultivation a portion of C.T.S. No.6553/2 measuring 16 gunthas contrary to the condition of the sanad and that this should be resumed and this 16 gunthas with 19 gunthas formed by alluvian of the northern side of C.T.S. No.6553/2 should be sold by auction for agricultural purposes. P.25-29 file II.

17. On 18th August 1934, the Prant III Division forwarded the above proposals of the Mamlatdar with approval. reverse of P.29 file II

18. On 10th July 1934 Ramsingh applied to the Collector that the strip of land in C.T.S.No.6553/1 measuring 696 Sq. yards be gifted to the community. P.65 file II.

19. On 11th March 1935, the Collector after receiving reports from the Mamlatdar, Gadag, dated 13-8-1934 and from the Prant III Division, dated 18-8-1934 ordered that the site C.T.S. No.6553/1 which belonged to Government and had the well in it should be sold to the owners of R.S.No.23 (i.e. plffs), for Ranch valuation subject to the condition that the owner of C.T.S. No. 6553/2 should be resumed for breach of condition as regards building a well, that this 16 gunthas plus 19 gunthas formed by alluvian should be sold by public auction. The Collector further ordered that the encroacher (Ramsingh) should be fined and

allowed to use the well for his site, That 16 gunthas in C.T.S. No 6553 Sh/No 2

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agricultural assessment for the period of unauthorised occupation should be recovered.

20. It appears that the family of the plff and Ramsingh on behalf of the Rajputs preferred an appeal to the Commissioner from the above mentioned order of the Collector. On 10-8-1935 and 26th September 1935 the Commissioner S.D. in his No.L.N.D.A.P.95 & 96 respectively passed orders to the effect that the Collector's order dated 4th March 1935 so far as it relates to the use of the well in C.T.S.No.6553/1 by the owners of C.T.S.No.6553/2 would be amended as follows "the sale of C.T.S.No.6553/1 is subject to the condition that the owners of C.T.S.No.6553/2 should be allowed to use the water of the well for domestic purposes only from their side of the well. In other respects the order is - confirmed."

P.83 & 85 file II.

21. It appears that C.T.S.No.3553 was sold to plff some time after the above mentioned order of the Commissioner.

P.77,101, 105 file IV, correspondance re: sale of C.T.S.No.3553/1 is not here.

22. On 1st October 1935, Ramsingh applied to the Collector, stating that the whole of the City Survey No.3553 which measured 37 gunthas obviously is included in C.T.S.No.3553/1 was granted to the Rajput community, that 5 ft. out of C.T.S. No.3553/1 was wrongly sold to Alur family (plff's family) and praying that the same should be sold to the Rajput community and that Basappa Alur unauthorisedly encroached upon Government land C.T.S. No.6553/1 by raising crops. Ramsingh also - complained that C.T.S.No.3553 was sub-divided into 3 parts without his knowledge.

P.1-7 file III.

23. On 23-12-1935 the Collector ordered that nothing could be done since final orders had been passed by the Commissioner S.D., in the matter of sale and requisite action agsinst Basappa Alur for encroachment should be taken. On 10th September 1936, the Collector after inquiry, ordered recovery from Sankappa Bharmappa (plff) fine of Rs.5/- and assessment of two annas for a unauthorised cultivation of two gunthas out of C.T.S.

P.II file III

P.19 file Do.

6553/1.

24. It appears that C.T.S.No.6553/2A measuring 35 gunthas was put up for sale on 29-5-1936. This 35 gunthas was made up of 16 gunthas forfeited for breach of condition and 19 gunthas formed by alluvian. P.55 file IV & C.C.F. para 18 above.

25. On 13-6-1936 plff Sankappa Bharmappa Alur applied to the Collector, Dharwar, contending that his heirs as owners of R.S.No.23 have a right of way through the land put up for auction sale and that this right of way should be ordered to be mentioned in the sale proclamation. As an alternative he prayed he would himself purchase the land put up for auction. On 13th July 1936, the Assistant Collector III Division ordered that the applicant (plff) might bid at the sale. On 24th July 1936 the auction sale of C.T.S.No.6553/2A took place and Ramsing Durgasingh himself purchased the land (35 gunthas) for Rs.246/-. On 26-8-1936 the Assistant Collector III Division recommended to the Collector that the sale may be confirmed. P.41 file IV Map of C.T.S.No. 6553/2A attached. Reverse of P.41 file IV. P.55 file IV. P.63 file IV.

26. On 19th August 1936 plff Sankappa Bharmappa applied to the Collector requesting that the Rajputs should be given possession of the site purchased by them (35 gunthas referred to above) subject to the condition that they should give the plff a right of way in the land purchased to go to his land R.S. No.23 & C.T.S. No.6553/1. Plff observed that at the time of the original grant of 27 gunthas to the Rajputs, the grant was made by Government subject to the condition that the Rajput donees should allow the use of way to the occupant of R.S.No.23. Then the ancestors of the plff used the right side of Balaji temple for their way. After Sadhu Laxmansingh's death the Rajputs obstructed the plff from using this site by erecting a fence and making a garden. Therefore, the plffs stated that he used to pass close by the small Maruti Temple built round. Plff further stated that even this passage was closed to the plff, when the Rajputs built the Dharmashala and that therefore he began making use of the land (35 gunthas sold at auction) for his way to his land. P.65-67 file IV.

27. In August 1936, the Rajput Samaj applied to the Collector praying for cancellation of auction sale of C.T.S. made in favour of Sankappa Bharmappa Alur, observing that

P.73-75 file IV.

the Rajput Samaj was not aware of the subdivision of C.T.S. No.6553 into 3 parts; that C.T.S. No.6553/3 was occupied by a katta of God Shivaling and Dharmashala that C.T.S.No.6553/3 was occupied by the temple of Balaji and that there was no way for Sankappa Alur to go to his field through C.T.S.No.6553/2 and that his ancestors used to go always to their field along the road of Azzamkhan Musjid and that he should not be allowed to pass through C.T.S.No.6553/2.

P.77, 63 file IV.

28. On 15th September 1936 the Collector sent the application of plff Sankappa dated 19th August 1936 (C.S.F.para 24 above) to the Collector for remarks. On 21-9-1936, the Assistant Collector forwarded the papers to the Mamlatdar, Gadag, for report.

P.97 file V.

29. On 28-1-1937 Ramsingh stated in writing to the Mamlatdar that a further way to the well 10 ft. wide between Dharmashala and Maruti temple would be left.

P.17 file II.

30. On 18-2-1937, the Mamlatdar submitted a report to the Assistant Collector that C.T.S.No.6553/2 was originally granted to Sadhu Laxmansingh on condition tha a way should be left open to the public to go to the well in C.T.S.No.6553/1; that the Sadhu himself agreed to that condition in his deposition before the Mamlatdar In view of these facts the Mamlatdar was of opinion that it was proper to have a way 10 ft. wide to the north of Shri Maruti temple in C.T.S.No.6553/2 connecting the public road and the well and the leader of the Rajput Samaj agreed to give such a way only, to the well and no to other portion of the plff's land. The Mamlatdar furth reported that the leader of the Rajput Samaj objected tc plff's going to his field and C.T.S.No.6553/1 through their land C.T.S.No.6553/2. The Mamlatdar observed that since Sankappa was a purchaser of C.T.S.No.6553/1 he has to be given access to that land which naturally lay - through the adjoining portion of C.T.S.No.6553/2 in - possession of the Rajput Samaj and that therefore the Rajputs cannot obstruct the plff from passing through C.T.S.No.6553/2. The Mamlatdar, therefore, proposed that

P.95 file III.

the sale of C.T.S.No.6553/2 in favour of Ramsing should be coufirmed, subject to the condition of a way claimed by the plaintiff or that the sale should be set aside.

31. On 11-11-1938, the Assistant Collector forwarded the papers to the Collector observing that the Rajputs were - willing to give a way 10 ft. wide only to the well, under the terms of the Sanad and that in his opinion, the sanad as interpreted by him would provide for a way on any side of the well, so that there would be means of access to the plff's field. The Assistant Collector was of opinion that the sale of ~~22~~ C.T.S.No.6553/2 to the Rajputs might be made subject to the right of way under the terms of the sanad as interpreted by him, but that since the Rajputs were unwilling to leave the way, the sale might be set aside. P.105 file IV.

32. On 14th January 1938, the Collector passed an order to the following effect. "Inspected the site with the Mamlatdar Gadag on 10-2-1938. The parties were also present. The Rajputs agreed to allow Sankappa Bharrappa Alur, the owner of R.S.No. 23 of Betgeri, a right of way to go to S.No.23 along the - boundary of C.T.S.No.6553/2A on the northern side. Mr.Alur, however, was unwilling to have access to his field by this - road. This is however Mr.Alur's own look-out and the Collector is not concerned with this aspect of the matter". P.107 file IV.

"There is no objection to the sale of of C.T.S.6553/2A in the name of Ramsingh Durgasingh being confirmed subject to the condition that a passage of 10 ft. wide should be allowed to the well in C.T.S.No.6553/1 from the public road by the - side of Shri Maruti Temple for the use of the public."

33. On 16th April ~~192~~ 1938 Sankappa applied to the Collector praying for reconsideration of his order dated 14th January 1938 and praying that the sale certificate in respect of C.T.S.No.6553/2A might be issued to Ramsingh on behalf of the Rajputs, subject to his (Plff's right) of way to his field R.S.No.23 of C.T.S.No.6553/1 along the north side of Dharmashala and the southern side of C.T.S.No.6553/2A on the northern ~~xd~~ s de. On 21st November 1938 plff repeated his application to the Collector. P.1-3 file V to the sketch attached to the file.

P.21 file V.

34. On 9-1-1939 the Collector ordered that Ramsing and

the Rajputs should be informed that if they do not observe the condition of sale of C.T.S.No.6553/2A that a passage of 10 ft. wide should be allowed to the wellin C.T.S.No. 6551/1 as agreed by the Rajputs before the Collector on 4-2-1938, the grant of portion B in C.T.S.No.6553/2 would be revested.

P.23 file V.

35. On 16th January 1938 Ramsing prayed for issue of sale certificate and measurement of the plot sold to him regarding C.T.S.No.6553/2A.

P.25-27 file V.

36. On 15th March 1939 the Collector ordered that Ramsing should deposit the 'Nim-tax fees for measurement. If he was unwilling to do so, the orders of the Collector dated 14-2-1938 and 9-1-1939 should be issued immediately given effect to.

37. On 19-3-1939 the Assistant Collector ~~added~~ asked the Mamlatdar, Gadag, to record the statement of Ramsing as to whether he agreed to have the site C.T.S. No.6553/2A after leaving a 10 ft. wide passage to the well as stipulated by the Collector. Otherwise the sale would be cancelled. If however, Ramsing agreed, possession of the site in suit be handed over after getting the agreement executed. The special condition should be inserted in it and the passage left marked in the sketch to be drawn up on the agreement. Ramsing should be further asked to deposit Rs.15/- as fees of measurement.

38. On 3rd April 1939 the Mamlatdar after recording Ramsing's statement reported to the Prant that Ramsing was willing to ~~have~~ leave a passage of 10 ft. to the well but not to the R.S.No.23 of plff. On 3-4-1939 Ramsing stated in writing before the Mamlatdar, Gadag, that he was willing to leave plff a passage of 10 ft. wide in C.T.S.No.6553/2 to the well along the southern side of Dharmashala, but he was unwilling to give a way for plff's cart and cattle.

Recovery of Reverse of P.31 file Do & P.35 file Do.

39. On 5-4-1939 the Assistant Collector ordered that notices of hearing under section 161 L.R.C. regarding

the passage be issued.

40. On 30-4-1939 the Assistant Collector, after hearing both the parties submitted ~~both the exparties~~ the papers to the Collector for orders, observing that the parties were called together with a view to effect a compromise, but the ~~compromise~~ Rajputs were willing to provide a passage only to the well. The Assistant Collector further added that there was no record in the whole correspondance to show that there was ~~no~~ a way before to go to R.S.No.23. P.41 file V.

41. On 11th July 1939 the Collector forwarded the papers to the D.I.L.R.Dharwar who was requested to report after enquiry whether there is any right of way through C.T.S.No.6553/2A and the land granted to the Rajputs for building a Dharmashala and temple to ~~it~~ S.No.6553/1 of Betgeri. If there was no right of way in these numbers, the D.I.L.R. was to ~~grant~~ point out the way. The Collector invited the attention of the D.I.L.R. to plff's applications dated 11-4-1938 and 19-8-1938, and also observed that plff should be allowed to go to his ~~fix~~ field S.No.23 from the public road to the east as he was an agriculturist and as he had to take the bullocks and carts to the field. P.43 file V

42. On 25th July 1939, the D.I.L.R. submitted his report observing that his lands marked A & B in the C.T.S. sheet were open and belonging to Government prior to their disposal. Land A was granted in 1926 to Rajputs and was subsequently resumed for breach of conditions and regranted in 1932 (Vide sanad of ~~1926~~ 26-8-1932 at page 245 file I). In accordance with the Collector's orders of 11-3-1935, 24-8-1935 and 16-10-1935, site B was given to Mr.Sankappa Alur (pff). In the first Kabulayat issued to the Rajputs in 1926, there is a condition that a passage through the land 'A' be kept open to the public for carrying water from the well in 'B'. This condition was, however, dropped from the sanad issued in 1932. Further in the order L.N.D.144 of 14-1-1938 (D.S.F.para 29 above) it was directed that a P.47 file V C.T.S.sheet P.47 file Do. P.65 file II.

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passage 10 ft. wide to the well should be kept in the land marked 'A'. The plff's (Sankappa) claim to a right of way through the land 'A' to his field R.S.No.23 and C.T.S.No.6553/1 could not be sustained as he (plff) did not put it forward before the Inquiry Officer who inquired into the title of land 'A' in 1914 and decided it to belong to Govt. on 3-10-1914, after issuing public and individual notices. The D.I.L.R. further observed that plff Sankappa is the occupant of hissas 4+5+6 of R.S.No.23 i.e. C.T.S.Nos.6533, 6532 and 6548 as seen from his statement dated 31-1-1937.

Copy of decision of inquiry office in 1914 P.45 file V.

To the south of C.T.S.No.6533 there is a clear road (Rajput Galli) just touching his land and it is possible for plff to carry his carts etc. to his land by this road. The D.I.L.R. was therefore of opinion that the plff's contention was groundless.

P — file IV.

43. On 4th October 1939 the Collector did not allow the request of Sankappa for a right of way on the grounds mentioned in the D.I.L.R.'s report, referred to above viz. that Sankappa did not claim a right of way in the lands marked 'A' 'B' representing C.T.S.No.6553/2ABC and 6553/1 before the inquiry officer in 1914 and that the mere user by Sankappa of the way through these lands which were Government open sites before, did not confer upon him any such right of way as he claimed, and that Snakappa could use the public road (Rajput Galli) lying to the south of his land before carrying his carts etc. The Collector also ordered that the sale of C.T.S.No.6553/2A held on 24-7-1936 for Rs.246/- in favour of Ramsing should be confirmed subject to the condition that a passage of 10 ft. wide should be allowed to the well in C.T.S.No.6553/1 from the public road by the side of Shri Maruti temple for the use of the public. On 10-1-1940, the Collector also ordered on the recommendation of the Mamlatdar and Prant Officer dated 31-10-1939 and 6-11-1939 respectively that the question of recovering any price for the well standing in C.T.S.No.3553/1 with the well was sold under the

sold to the Deotee, as it side of 3553/1

the orders of the Collector dated 11-3-1935.

44. On 13th December 1939 plff Sankappa filed an appeal to the Bombay Revenue Tribunal from the above mentioned order made by the Collector on 4th October 1939. On 15-7-1940, the Tribunal in its B.R.T.No.352-~~1939~~(0-318) ordered as follows:- "The appellant (Sankappa) has sufficient access to the well notwithstanding the sale by the Collector to the opponent. The appeal is dismissed".

45. On plff gave notice of suit to the Collector.

46. On 10-10-1942, plff filed the present suit in the First Class Sub-Judge's court at Dharwar for the following reliefs.

1. That a permanent injunction be issued against deft restraining him from obstructing and interfering with the right of way of plff to pass from the Betgeri road through C.T.S.No.6553/1 and R.S.No.23.

2. Recovery of costs of suit.

3. Any other equitable relief

GROUNDS OF DEFENCE.

Parties.

It may be urged that Government is neither a necessary ~~party~~ nor a proper party to the suit. Assuming, but not admitting that plff has a right of way over C.T.S.No.3553/2A, Government have no interest in the property any longer, since it transferred the said City Survey No.to Rajputs by auction sale dated 24th July 1936 which was confirmed by the Collector on 14th January 1938. (C.S.P.Paras 22 & 29 above) If plff can prove in the suit his right of way, he may exercise it against deft No.1.

Merits:-

Plff bases his claim to a right of ~~way~~ way to his land S.No.23 of Betgeri and C.T.S.No.3553/1 purchased by him at the auction sale about 1935 through C.T.S.No.6553/2 sold to deft 1 on the following grounds viz. (1) Immemorial user by plff's family of the way and (2) prescriptive right (3) as a way of necessity (4) admission of deft 1.

Both C.T.S.Nos.3553/1 and 3553/2 originally belonged to Government and were one piece of land before its sub-division. That land was a waste land prior to its transfer by sale by Government to plff and deft 1. It is possible that plff's family might be going through this land to reach their C.S.No.23. But the mere fact of user would not vest with any right of easement. Under section 15 of the Easements Act, the user must be as of right for over 60 years against Government. It is common knowledge that inhabitants of a village use Government land without the knowledge of Government. But such surtive user cannot avail plff. The allegation that plff and his family have been using the way from time immemorial should however be denied. Similarly the plff's allegation that he has any prescriptive right for using the way should be denied. It was only on 12th August 1936 that plff put forward his claim to a right of way when he applied to the Collector that C.T.S.No.3552/2 should be given to deft 1, subject to his right of way. After inquiry, the Collector found that plff had no such right of way. He found that the only way was to the well in C.T.S.No.3553/1. The right of way which the deft 1 and Jadhu Lax ansing admitted before the revenue authorities was a public way to the well only. They have emphatically denied to give any way to plff for the purpose of going to his field and carrying his cart and bullocks there through their C.T.S.No.3550/2. Therefore, the admission of deft 1 will not avail plff.

Next, regarding the way of necessity claimed by plff the right of way is not a way of absolute necessity in this case. The D.I.L.R.'s report dated 25th July 1939 is(para 39 above) shows that plff can pass through Rajput Galli adjoining his property. It is neither a way of qualified necessity and it does not fall under section 13(b) of the Easements Act as it is a discontinueous easement (Please see 44 Bombay L.R. 673, Mallappa Chanavirappa Hullur Vs. Rachappa Panchappa Guledgud.

Draft W.S

(1A) This deft has sold C.T.S.No.6553/1 to plff and C.T.S. No.6553/2 to deft No.2. Therefore this deft has no subsisting interest in them any longer and the deft is neither a necessary nor a proper party to the suit. Moreover, plff admits in para 7 of plaint that no relief is claimed against this deft.

2. The allegations in para 3 of plaint are denied. the plff's claim to a right of way to C.S. No.23 and C.T.S. No.3553/1 through C.T.S. No.6553/2, either by way of immemorial user or by prescription or as an easement of necessity is denied.

3. The further allegation in that para regarding the user of the way either by plff or his ancestors is also denied and the user, if any, upon C.T.S. No.3553/2 which was Government open site, is furtive and does not vest in plff any right.

4. The allegation in para 5 of plaint regarding admission of deft 1 is also denied. Deft 1 has only admitted the existence of a right of public way to the well and not a private right of way of plff to his land.

5. The orders of the revenue authorities and the Bombay Revenue Tribunal are all legal, intra vires and justified. Allegations to the contrary in paras 6 and 7 of ~~plaint~~ plaint are denied.

6. Plff is not entitled to the reliefs sought for.

7. In any event, the plff should pay the costs of this deft.

8. The plff's suit should be dismissed with costs.

P.S. The following contention may also be made -

(1) The suit is bad for want of notice.

If Pltf produces the notice (& he will be called upon to produce it), & if the notice is found to be in compliance with sec 80 CPC, the contention in (1) above may be abandoned.

This relates to Dharwar Civil Suit 453 of 1942. The facts leading to the suit (omitting unnecessary details) are as follows: The plaintiff holds S.N.23 in Gadag Betgeri and adjoining thereto is C.T.S.6553 which was formerly owned by Govt. Of this land, plots 2B and 2C were held by one Ramsing, defendant 1, and plot 1 which contained a well had been granted to the plaintiff subject to the right of the deft 1 to take water from the well and provision of a passage over the land. Recently C.T.S. No.6553/2A was sold by auction and the bid offered by defendant 1 was accepted. The plaintiff then applied to the Collector that the sale certificate to be issued to defendant 1 should be expressly subject to his own right of way over the said land. The Collector rejected the application and confirmed the sale subject to the condition that a passage 10 feet wide leading from the public road to the well in C.T.S.6553/1 should be allowed for the use of the public; and his order was confirmed by the B.R.T. The plaintiff now says that defendant 1 is obstructing his right of way and prays for an injunction restraining him from so doing.

See sketch at p.49 of file E.

This stipulation was made on the assumption that the well was a public well, but in point of fact it was sold by Govt to deft 1 as state land.

2. The plaint expressly states that no relief is claimed against Govt. and that it is impleaded merely as a formal part The dispute is one between the plaintiff on one hand and defendant 1 on the other, and Govt. is not interested in the same. In the circumstances it does not appear necessary to sanction the defence of the suit.

3. A written statement on the lines of the appended draft may be put in. The D.G.P. may however be instructed to point out that the orders of the revenue authorities were intra Those orders did not purport to adjudge any civil right. D. G.P. should be further asked to urge that whatever the

cision on the question as to the existence of the alleged easement, the suit must be dismissed as against Govt. and its sts paid.

19/5-

R.L.A. [redacted]

Secy R.D. 20-5-43 Issued under no. 3697 dt 20-5-43

Office Explain AAS's [illegible]

Peon 26/5

A/28.5.43.

Submitted to S.A.S. Jhansi.

The case marked to the R.L.A. was brought by the peon and kept in the despatch box. It is stated now R.D. through oversight, which is very much regretted. I humbly request your honour to excuse me for the same.

L.L. Kasturbar
28/5

M. L. may be excused this time.
28/5

R.L.A

Pleader 1/6

Z-1

In the Court of the First Class Sub-Judge, Dharwar.

Civil Suit No.453 of 1942.

Sankappa Bharmappa Alur ... ... Plaintiff;

versus

(1) Ramsing Durgashing Pulanekar,

(2) The Province of Bombay. ... Defendant.

The written statement of defendant No.2 abovesaid is as follows:-

1. The suit is barred under section 80 of the Civil Procedure Code, 1908. The notice is unsufficient in law, and the plaint does not contain a proper averment as to its delivery as required by that section.

2. The plaint discloses no cause of action against this defendant. Even on the assumption of the truth of the allegation in the plaint, the plaintiff is not entitled to any relief as against this defendant. the Plff does not ask for any such relief.

3. This defendant is not a necessary or proper party to this suit. The dispute is one as between the plaintiff on one hand and defendant 1 on the other. It is therefore submitted that this defendant be struck off the record and its costs be awarded.

4. This defendant does not admit that at any time during the period when the site C.T.S.No.6553/1/2 vested in this defendant the plaintiff exercised a right of way as of right and as an easement.

5. It is denied that the orders passed by the revenue authorities are ultra vires.

6. This defendant is not interested in the dispute. Whatever the decision of the Court on the question of the plaintiff's alleged right of way, it is submitted that the costs of thism defendant be awarded.

... ...

District Government Pleader, Dharwar..

I, District Government Pleader, Dharwar, do hereby solemnly affirm that what is stated in paragraph 1 to 6 above is true to the information received and believed to be true. This verification is made at Dharwar on 1943.

District Government Pleader, Dharwar.

No. 4022
Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 5th June 1943.

23

Subject: Dharwar C.S.453 of 1942
Gankappa Bharmappa Alur
Versus
R.D.Pulenekar and Province
of Bombay.

MEMORANDUM.

With reference to the above subject, the District Government Pleader, Dharwar is informed that the plaint in the above suit expressly states that no relief is claimed against Government and that it is impleaded merely as a formal party. The dispute is one between the plaintiff on one hand and defendant 1 on the other, and Government is not interested in the same. In the circumstances it does not appear necessary to sanction the defence of the suit.

2. Two copies of the written statement are forwarded herewith to the District Government Pleader for filing them in the Court. He is however instructed to point out that the orders of the revenue authorities were intra vires. Those orders did not purport to adjudge any civil

right. He is also further requested to urge that whatever the decision on the question as to the existence of the alleged easement, the suit must be dismissed as against Government and its costs paid.

3. Files I to VI accompany. A spare copy of his report is returned herewith.

OC ×

For Remembrancer of Legal Affairs.

To

The District Government Pleader,
Dharwar.

Copy forwarded with compliments to the Commissioner, S.D. for information.

Copy forwarded with compliments to the Collector of Dharwar with reference to his endorsement No. L.A.W., dated 23rd March 1943 for information.

2991—7,500—7-42—R4*
G. R., J. D., No. 8935, dated 21-10-19 and 3533, dated 22-12-21,
from the Regr. H. C., A. S., Bombay. C. P. C. Schedule I, Appendix G, No. 6.

Civ. A 115

ಅಪೀಲಿನ ಸುನಾವಣೆಗಾಗಿ ನೇಮಿಸಿದ ದಿವಸವನ್ನು ಕುರಿತು ರಿಸ್ಪೊಂಡೆಂಟನಿಗೆ ನೋಟೀಸು (ಆ. ೪೧, ಕಾ. ೧೪).

(ಫಾರ್ಮ ನಂಬರು ೬, ಪರಿಶಿಷ್ಟಗ, ಶೆಡ್ಯೂಲ ೧.)

ಇಲ್ಲಿಯ ಜಿಲ್ಲಾ ಜಜ್ಜ ಕೋರ್ಟಿನಲ್ಲಿ

ಮುಕ್ಕಾಮು ಇಲ್ಲಿ. ನಿ॥

ದಿವಾಣಿ ಮುಕದಮೆ ನಂಬರು ೪೫೩ ಸನ್ ೧೯೪೪ ನೇ ಪೈಕಿ

ಅಪೀಲೆಂಟ.

ವಿರುದ್ಧ

ರಿಸ್ಪೋಂಡೆಂಟ.

ಮುಖಾಂತರ—

ತಾರೀಖಿನ ಅಪೀಲು ಕೋರ್ಟಿನ ಸನ್ ೧೯೪೪ ನೇ ಇಸವಿಯ ತಿಂಗಳಿನ ೨೨ ತಾರೀಖಿನ ಮೇಲೆ ಅಪೀಲು

ಬೇಲೀಫನ ಹೆತ್ತವ— ರಿಸ್ಪೋಂಡೆಂಟನಾದ ಇವನಿಗೆ.

ತಾರೀಖು—

ನಿನಗೆ ನೋಟೀಸು ಕೊಡುವದೇನಂದರೆ, ಈ ವ್ಯಾಜ್ಯವಲ್ಲಿ ಕೋರ್ಟಿನಿಂದ ನಾಳುರ.

Realon
30-6-44.

ಮಾಡಲ್ಪಟ್ಟ ಹುಕುಮನಾಮೆಯ ಮೇಲೆ ಧಾರವಾಡ ಇವನಿಂದ
ಅಪೀಲ ಮಾಡಲ್ಪಟ್ಟಿದ್ದು ಅದು ಈ ಕೋರ್ಟಿನಲ್ಲಿ ದಾಖಿಲ್ಕರು ಮಾಡಲ್ಪಟ್ಟಿದೆ, ಮತ್ತು ಈ ಅಪೀಲಿನ ಸುನಾವಣಿಯ
ಬಗ್ಗೆ ಸನ್ ೧೯೪೪ನೇ ಇಸವಿಯ ಜುಲೈ ತಿಂಗಳಿನ 31 ತಾರೀಖು ಈ ಕೋರ್ಟಿನಿಂದ 31-7-44
ನೇಮಿಸಲ್ಪಟ್ಟಿದೆ.

ನೀನು ಸ್ವತಃ ಯಾ ನಿನ್ನ ವಕೀಲನು ಯಾ ಅಪೀಲಿನಲ್ಲಿ ನಿನ್ನ ಸಲುವಾಗಿ ಕೆಲಸ ನಡಿಸಲಿಕ್ಕೆ ಕಾಯದೆಯಿಂದ
ಅಧಿಕಾರ ಪಡೆದಂಥ ಬೇರೊಬ್ಬ ಮನುಷ್ಯನು ನಿನ್ನ ಬಗ್ಗೆ ಹಾಜರಾಗದಿದ್ದರೆ, ನಿನ್ನ ಪರೋಕ್ಷದಲ್ಲಿ ಅಪೀಲಿನ
ಸುನಾವಣಿಯಾಗಿ ನಿರ್ಣಯವಾಗುವದು.

ಸಮುಕ್ಷ ಪ್ರತಿಜ್ಞೆಯು ಮೇಲೆ

ತಾರೀಖು—

ಈ ಪೊತ್ತು ಸನ್ ೧೯೪೪ನೇ ಇಸವಿಯ ಜುಲೈ ತಿಂಗಳ 27ನೇ
ತಾರೀಖಿನ ದಿನ ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ನಾರ್ಯರ.

ಜಡ್ಜ.

ನೋಟು.—ಅಮಲ್ ಬಜಾವಣಿಯನ್ನು ನಡಿಸಲಿಕ್ಕೆ ಹುಕುಮು ಮಾಡಲ್ಪಟ್ಟಿದ್ದರೆ, ಅದನ್ನು ಈ ನೋಟೀಸಿನಲ್ಲಿ ತಿಳಿಸಬೇಕು.

C-ivil Appeal No.14[illegible] of 1944.

In the court of the District Judge,

at Dharwar.

Appellant:-Lankappa Bharmappa Alur, age 38, caste Lingayat, occupation agriculture of Hetgeri Taluka Gadag.

Respondent:-Ramsing Durgasing Chuhani alias Rajput, age 43, caste Rajput, occupation trade of Hetgeri, for himself and on behalf of the Rajput community of Hetgeri Taluka Gadag.

2. The Province of Bombay.

3. Bodbasappa Mudakappa Alur, age 51, caste Lingayat, occupation trade of Annigeri Taluka Navalgund.

Rs.5/- for both court fee and juris ict-ion.

The appellant begs to appeal against the decree of the Joint F.C.Court, Dharwar, in L.C.Suit No.459 of 1943 dated - 22-4-1944 on the following among other grounds.

1. The decision of the trial court is contrary to law and the evidence in the case.

2. The trial court erred in not properly appreciating the - pleadings in the case.

3. The learned Judge ought to have held that the appellant was the owner of S.No.355/1 even prior to his purchase and his - explanation as to the purchase ought to have been accepted. In substance, it was a confirmation of his title and not a fresh acquisition thereof.

4. The documentary evidence in this connection has not been referred to at all by the trial court.

5. The lower court erred in observing that there was any inconsistency in the plaint and the evidence at the trial.

6. The evidence in the case has been examined from an - entirely wrong point of view.

7. Significant admissions in the evidence of the plaintiff and the conduct of respondent himself are ignored.

8. It may be noted that Kaft Ramsing never stated at any time before the revenue authorities that appellant was passing through the Rajput Galli road or that it was physically impossible to use the passage . . This omission on his part clearly shows that the

present defence is an after-thought and untrue.

9. The witnesses for the defendant have admitted that C.S.No. 66/2 and 67 could be cultivated only by passing from the road. He himself admits that the said number was cultivated by him, but curiously enough, he does not know which passage his tenant uses, nor does he mention the name of the tenant, nor is he examined.

10. The trial erred in making unwarranted assumptions and then basing its conclusions thereon.

11. C.S.No.68 is admittedly the ancestral land of appellant's family and their ancestral house is in another part of Petgeri and not in Rajput Galli. Their shifting to Rajput Galli some 20-25 years ago is absolutely irrelevant in determining the question at issue.

12. The depression on the side of the road is wrongly stated to be a drain. Further, the depression is neither abrupt, nor so deep as to render it impossible for the passage of carts. This will be clear from defendant's evidence itself.

13. The reference to the construction of a bridge etc. is unsound and based on an entire mis-apprehension of the conditions of agriculturists ~~xx~~ and agriculture as well.

14. The trial court ought to have held that the alleged Rajput Galli passage was no passage at all to C.S.No.68 and in view of the Tamarind tree and the Bori-tree which was very recently cut down, it could have been used at all as a passage.

15. The measurements etc. shown by the trial court in its inspection note appear to be approximate and even assuming that the width is 3 feet, it could be absolutely insufficient for the passage of carts laden with fodder etc., and other agricultural implements.

16. The learned trial judge erred in observing that the appellant would not have allowed himself to be fooled. He has been taking steps, as advised from time to time, and has been insisting from the beginning that he has a right of passage from the road to his land.

17. The lower court erred in trying to explain away the admissions of the Rajputs solemnly made before the Collector and stated by him in his orders. The wording of the order is too clear and the trial court erred in observing that it was only for access to the well.

18. The learned Judge has missed the significance of Ex.31 the other applications and statements of defendants. He does

not say that appellant was using the alleged pajout galli passage and has no right of way, and this admission on his part gives a lie to his present defence.

10. The findings on issues nos.1, 3 and 4 are wrong.

11. The evidence led for appellant ought to have been accepted by the trial court.

12. Proper presumptions and inferences are not drawn and probabilities are not properly appreciated.

The claim of appellant ought to have been decreed.

On these among other grounds, it is prayed, that the decree of the trial court be reversed and the suit of appellant be decreed in full, with costs throughout.

Hamer,

5-6-1944.

Drafted and presented by

sd/ V.G.Ramchandi

Pleader.

In the court of the Joint First Class Sub-Judge, at Dharwar.

L.C.Suit No.453 of 1942. Ex.100.

Sankappa Bharmappa Alur, age 35, caste Lingayat, occupation agri- of Betgeri Taluka Gadag. ..... Plff.

Against.

1. Ramsing Durgasing Phulani, alias Rajput, 45, Rajput, trade of Betgeri Taluka Gadag for himself and for and on behalf of the Rajput community of Betgeri, Gadag.
2. The Province of Bombay.
3. Dod-Basappa Mudakappa Alur, age 50, Lingayat occupation trade, residing at Annigeri Taluka Navalgund (Added as per order below Ex.28) 17-7-1943. .... Defts.

Sd/ A.C.S.
S.J.

Claim Rs.

Suit for a direction to deft No.1 not to prevent the plff from passing across S.No.6553/2A in order to go to his own land.

2. The plaint is based on the allegations that the plff is the owner of part of S.No.23 and 6553/1 a that S.No.23 originally belonged to his ancestors, that S.No.6553/2 abuts on the main road that it originally belonged to Government, that the plff and his ancestors have been passing across 6553/2, that this is an easement of necessity and that they have also acquired an easementary right of way.

3. The plaint sets forth that the Government of Bombay (deft 2) granted 6553/2B to the Rajput community in 1926 and in 1936 sold 6553/2A, that after the grant of 1926 the plff has been passing through S.No.6553/2 along the northern edge of 6553/2B that the Rajputs admitted before the revenue authorities the right of the plff to pass across 6553/2, that the revenue authorities refused to recognise the plff's right of way, that the orders passed by the revenue authorities are ultra vires, that no notice was served on the plff before these orders were passed, that deft 1 unlawfully has been preventing the plff from passing across the lawfully land and that as a result he was compelled to bring the suit.

4. Deft No.1 in his written statement contends that the plff is not the exclusive owner of S.No.23, that the remaining owners are necessary parties to this action, that the plff is not the owner of 6553/1, that he is not in possession, that the well in 6553/1 is of the ownership of Government, that 6553 was granted to the Rajput community by Government in 1925-26, that they converted the land to non-agricultural use, that as a result the Government resumed the land, and later at an auction sale the Rajput community purchased the land.

5. Deft No.1's W.S. further alleges that there was brush-wood on S.No.6553 prior to 1926, that it was inaccessible, that there was no right of way across that land that the plff and his ancestors did not pass across the land, that the existence of the Muncipal guttar makes it possible for men and carts to pass that way, that in the course of the City survey inquiry in 1913-14 the plff and his ancestors did not claim a prescriptive right of way, that when S.No.6553/2A was sold in auction the plff though present did not claim a right of way that the plff's conduct creates the bar of estoppel that the plff's right of way is along the Rajput Galli, that the plff is bound by the orders passed by the revenue authorities, that the suit is time barred, that the suit should have been brought within one year of the year of the passing of the revenue order, that no proper notice was served on the Goverbment that no right of way can be acquired across waste land and that the suit should be dismissed.

6. The Government of Bombay in their W.S. Ex.24 contend that the suit is barred under section 80 of C.P.C. that the plaint does not disclose cause of action against the Government, that the Government is not a necessary party and that the plff has not acquired a prescriptive right of way.

7. Deft 3 in w.s. Ex.31 admits the plff's case.
8. The following issues were framed in the case.

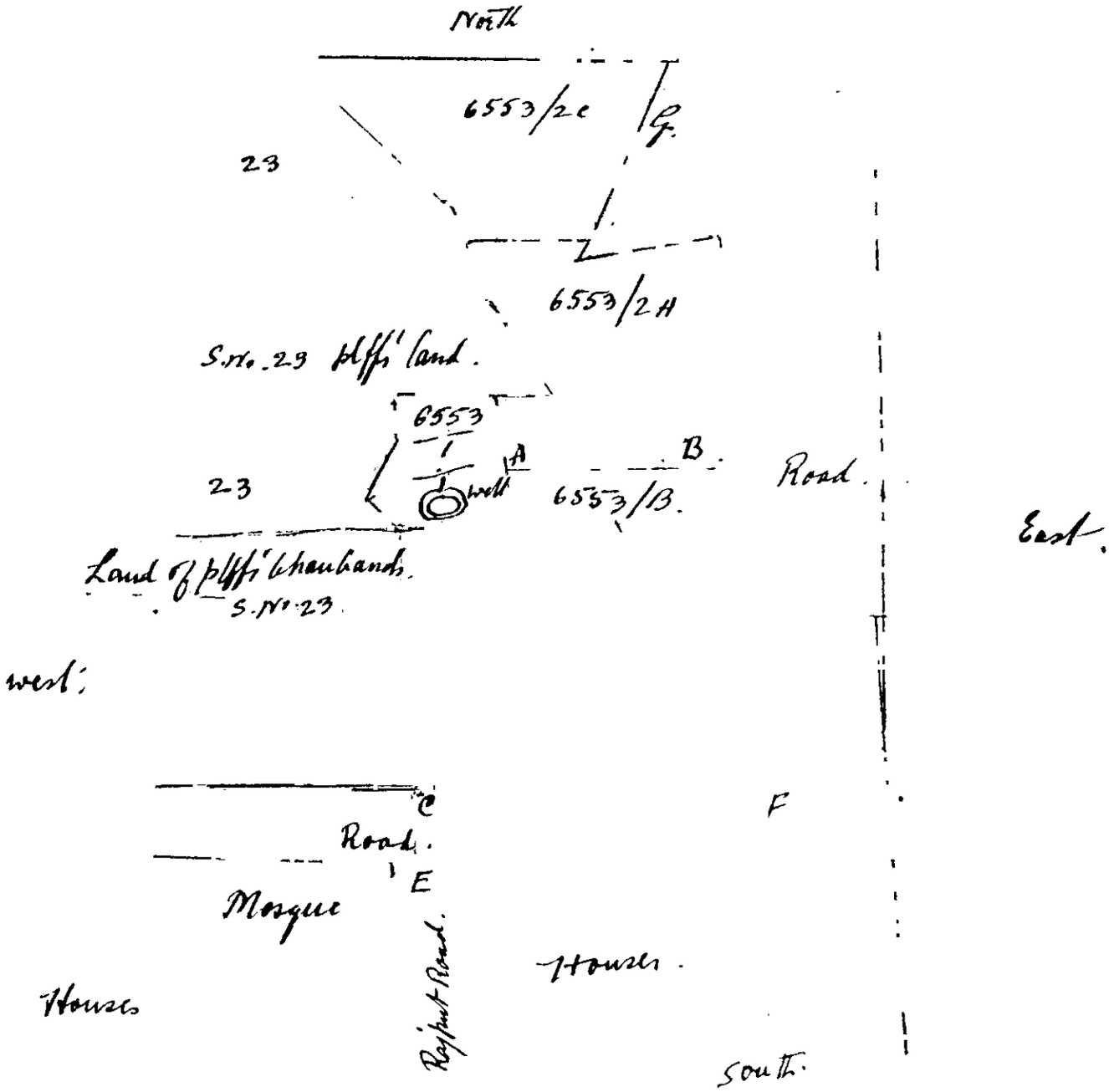
1. Whether the plff has ~~ex~~ acquired an easementary right of way across the suit strip in order to go to his lands S.Nos.23 and S.No.6553/1 ?
2. Whether that right has been enjoyed either from time immemorial or during a statutory period of 60 years ?
3. Whether the plff was and is the owner of S.No.6553/1 ?
4. Whether the notice served on the Government is according to law ?
5. Whether the suit is barred under sec.80 of the C.P.C.
6. Whether the Government of the Province of Bombay is a necessary party to this action ?
7. Whether the plff's conduct creates the bar of estoppel as alleged in deft 1's W.S.
8. Whether the plff's right of way is an easement of necessity ?
9. Whether the suit is time barred ?
10. What order ?

9. My findings are :-

1. No.
2. No.
3. Is now the owner having purchased it from Government.
4.)Uncecessary
5)
6. Government is not a necessary party.
7. No.
8. No.
9. Unnecessary.
10. General issue.

Reasons.

10. The locus in quo is shown on the following rough plan.



11. The plff's case is that he is the owner of part of S?No.23 and 6553/1 and that he has a right of way across S?no.6553/2A which is said to be the servient tenement. This right of way is mared A,B in the above plan. His grievance is that the defts recently obstructed and therefore he claimed a perpetual injunction preventing the defts from obstructing the road A.B.C.

12. I now turn to his plaint. Para 3 of his plaint is in these terms:- "6553/2 belongs to Government from the very beginning and the plff and his ancestors have been passing through S.No.6553/2 to their land R.S.No.23 and 6553/1 from time immemorial Then para 4 is as follows:-

"It appears that deft No.2 granted a portion of S.No.6553/2 being No.6553/2B by way of ~~xxxity~~ charity to deft No.1, the Rajput community of Betgeri, in about 1926. Then in about 1936, deft 2 sold the ~~otherxxxxxx~~portion viz., No.6553/2A to deft 1 after the grant of 1926, plff has been passing through No.6553/2 along the northern edge of 6553/2B (i.e. along and within the southern - boundary of 6553/2A), to No.6553/1 and No.23".

13. Now according to his plaint there was not a regular or defined pathway over S.No.6553/2 till 1926. The existence of a definite route is alleged subsequent to the year 1926 namely "after the grant of 1926".

14. Despite these clear admissions that a definite route A B came into existence after 1926 evidence is led directed to show that the plff and his men have an ancient right of way to pass across this definite route A.B.

15. Consequently the admissions made by the plff in his plaint are irreconcilable with the case which he put forward in his evidence. This inconsistency certainly shakes ~~x~~ the credibility of the plff and his witnesses.

16. At the same time, it must be admitted that even when there is no regular defined pathway, a right of way can be acquired as an easement. If the plff has stated the two termini of the path way he claimed, his suit ought not to fail simply on the ground that the pathway passed over a piece of waste land in different tracks. It ~~is~~ has been held that in such a case an easement of way can be acquired. (A.I.R.1924 Cal.359).

17. Now the plff's case is that the road A B is necessary for him to go to his land and that this is the only road by which he can gain access to his land S.Nos.23 and 6553/1. As against this version, the deft's case is that the plff and his ancestors gained access to their lands across the Rajput Galli to the South marked C D in the above plan.

18. The questions seem to arise in this state of the pleadings (1) whether the plff and his ancestors gained access to S.No.23 till 1926 from a road running across S.No.6553/2, assuming of course that there was no regular defined roadway. (2) Whether from the year 1926 they were using a ~~regin~~ regular defined roadway marked A B in the above plan.

19. This brings me to the oral evidence. The plff in his evidence Ex.82 says that they did not use the passage C D known as the Rajput Galli. His explanation is that the passage C D is too narrow for carts to pass that way. Shiddappa Ex.84 examined on the plff's side says that the plff and his ancestors have been using the suit roadway A.B. In cross examination he admitted that he does not use the suit ~~x~~ roadway in order to go to his own land. He further says that this is the only road by which the plff could go to his own land. To the same effect is the evidence of Fakirappa Ex.86. He says that carts stop near the mosque marked E since they cannot pass beyond M apparently because the passage is too narrow. Mallangouda Ex.85 says that he had x cultivated S.No.23 for 8 or 9 years that he gave up cultivation 4-5 years ago and that he was using the suit ~~way~~ roadway. In cross examination he admitted that he did not execute a Kabulayat to the plff. His explanation is that his lease was entered in the record of rights.

20. I visited the site in the company of the parties and pleaders and it was seen that the width of the Rajput Galli marked C.D. was 8 Ft. wide. One feature of this roadway C.D. called Rajput Galli is that this passage C.D. is the shortest way from the plff's house to his own land and is also the shortest way to the twon from

to the town from his own land S?No.23. And it is admitted that the plff has been staying at Betgeri during the last 35 years. I cannot for a moment believe that the plff and his ancestors never used this shortest and convenient way C.D. and that they went across the round about suit passage A.B. Another thing is that near B and across F.G. is a drain marking it inconvenient for carts to pass. The plff was examined on the point and his evidence is extracted below:-

"There is a slight depression at the commencement of the suit passage (at point B). But it is possible to take carts. This slight depression is caused by the recent Muncipal gutter prior to that there was no depression".

21. It is observable that the land slopes to the north and the rain water naturally would flow towards the north marked G. As a matter of pure probability, therefore, I must assume the existence of a drain or water passage alongside F.G. from ancient times because this drain cannot be a recent innovation. That being so, the passage would be - blocked near B. Furthermore, if the plff and his ancestors were so - minded to use the roadway A.B. they would have constructed some sort of bridge to fecilitate the passing of carts near Point B. In the absence of any such improment, I must assume that they never using the roadway A.B. According to the plff's witness Mallangouda Ex.85 the - depression is to the extent of ½ ft. Now a depression to this extent would seriously affect the passing of carts across it. A depression of this sort can never make it a convenient cart road.

22. Deft No.1 has examined himself at Ex.88 and he swears that the plff and his ancestors did not use the suit passage and that the depression is to the extent of 2 or 3 cubits. He says a cart can pass across the Rajput road.

23. This brings me to the documentary evidence. The first document is the letter addressed by the plff to the Collector on the 19th August 1936 (Ex.70). The admissions made in this letter are similar to the admissions made in the plaint that they began to use the suit roadway subsequent to 1926. Ex.70 states that originally the passage was in the middle of 6553/B, that lateron on the death of one Laxmansing in 1926 or thereabout there was obstruction and that as a result they were using the roadway to the north of the original - passage, but within the limits of 6553/B, that there was again an obstruction and as a result they again began to use a new roadway A B namely the suit passage.

24. Now, if the plff had a right of way he would not have allowed himself to be fooled in the manner complained of in his letter Ex.70.

25. The evidence also establishes that Government had put up for sale 6553/2A on 24th July 1936. By letter addressed to the Collector on 13th June 1936 (Ex.68) the plff claimed a right of way across 6553/2a Subsequent events happened by which deft 1 purchased 6553/2A on 24th July 1936 (Ex.98). Ex.98 the auction memo does not recite that it was sold subject to nay right of way.

26. With reference to the plff's petition praying that the Collector to reserve a right of way across 6553/2A, the Collector pass--ed the following order (Ex.69):-

"The Rajputs agreed to allow Mr.Sankappa Bharmappa Alur (plff) the owner of S.No.23 a right of way to go to S.No.23 along the boundary of 6553/2A on the northern side. Mr. Alur was, however, unwilling to have access to his field by this road. This is however Mr.Alur's own lookout and the Collector is not concerned with this aspect of the matter".

27. Mr.Jamkhandi for the plff relied on Ex.69 and argued that Ex.68 contains an admission of a right of way. I do not agree with this view because the Rajputs might have consented to allow a passage in the interest of peace. Such an offer cannot create a legal right.

28. The next document is the Collector's order dated 9th - January 1939 (Ex.79). Ex.79 is in these terms:-

"The Rajputs have agreed before the Collector on 14-2-1938 to allow the applicant his right of way to go to his land S.No.23. The sale of C.T.S.No.6553/2A to Ramsing has been confirmed subject to the condition that a passage of 10 Ft wide should be allowed to the well in C.T.S.No.6553/1. The Rajputs and Ramsing should be informed that if they do not observe these conditions, the grant of portion B in C.T.S.6553/2 will be revoked."

29. Now Ex.79 vaguely referes to an admission made by the Rajputs (deft No.1) "to allow the applicant a right of way to go to his

land S.No.23". To my mind, Ex.79 does not strengthen the plff's case because the passage across 6553/2A is limited to gain access to the well situate in S.No.6553/1. It is unconnected with the question as to whether the plff had a right to go to S.No.23 across 6553/2A. In fact that right by implication is not recognised in Ex.79.

30. Ex.91 is a statement made by deft 1 before the Mamlatdar on 3rd April 1939 in these terms:-

"I am willing to allow a passage 10 Ft. wide to the south of the Dharmashala (namely across 6553/2B). I cannot allow a passage for carts. This right is limited to the public to gain access to the well in 6553/1. I am not willing to grant a right of way to go to S.No.23".

31. To my mind, Ex.91 does not carry the case any further in the matter of issues.

32. A subsidiary point was raised as to whether the plff was the owner of S.No.6553/1 and not the Government. The answer is contained in his own letter dated 14th April 1936 addressed to the Mamlatdar (Ex.65). Ex.65 is in these terms:-

"Ramsing has complained that I have trespassed on 6553/1. The Collector sold that land to me in 1935 for consideration. I have not yet got possession".

33. In view of this admission, it is impossible to contend that he was originally the owner of S.No.6553/1. It is unnecessary to discuss this point in greater detail because it is unconnected with the dispute as regards the suit passage across 6553/2A.

34. For the reasons mentioned above, my finding is that the plff and his ancestors have been using the southern boundary roadway C.D. and not the disputed roadway A.B. for the purpose of going to their land R.S.No.23. SNo.6553/1 is a recent acquisition and it follows that the plff has not also acquired a right of way to go to 6553/1 across the suit passage, A.B.

35. In the result, the suit fails and is dismissed. The defts to get their costs. (Two sets).

22-4-1944.

Sd/ A.C.Sequira

Joint First Class Sub-Judge.

Dwr 3/45

No. 283 nd
Dharwar 2.. August 1944.

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37

To

The Remembrancer of Legal Affairs,

Bombay.

Subject:-Sanction of defence of Civil Appeal No.145 of 1944.

Sir,

I have the honour to state that the plaintiff in Dharwar Civil Suit No.453 of 1942 has preferred an appeal to the District Court, here, against the judgment and decree of the learned Joint First Class Sub-Judge, dated the 22nd April 1944. I may invite your kind attention to R.L.A.'s memorandum No.4022 dated the 5th June 1943 wherein it is stated that it is not necessary to sanction the defence of the suit, on the ground that Government is not interested in the matter under dispute.

Instructions are, therefore, solicited as to whether the appeal should be defended in the appellate court, and if so, sanction for the defence of the same may kindly be accorded, on the -

favourable points mentioned in the judgment of the lower court.

The copy of judgment in L.C.Suit No.453 of 1942 and as also a copy of appeal memo (C.A.No.145 of 1944) are submitted herewith for favour of perusal.

Your obedient servant,

S.R. Mudalgi

for District Government Pleader.

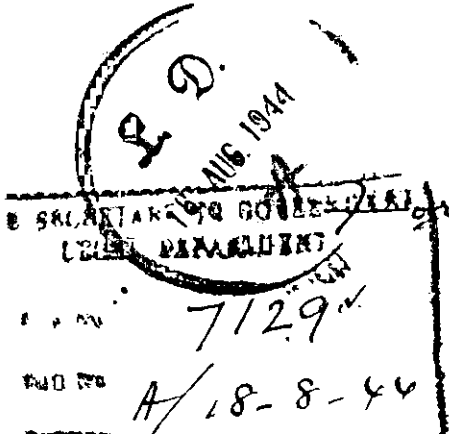
Respectfully submitted through the Collector of Dharwar, as per Rule 83(2) of the Law Officers Rules.

S.R. Mudalgi

for District Government Pleader.

L. Dwr 3
43

No. L.A.W.-422
Dharwar, 10-8-1944
14



forwarded with compliments

Collector
Dharwar

Submitted with pps. (S. Dwr. 3/43)

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1918.

A.P.A.

Please see Mr. Mercedeswari's Note at Flag J and L.S. Memo. No. 4022 dated 5th June 1943. He was decided not to defend Sherwar Civil Suit No. 453 of 1942 on the ground that Govt. was not a necessary party. The suit has been dismissed by the Trial Court which has held that Govt. is not a necessary party and Govt's costs are allowed. Plaintiff has filed Civil Appeal No 145/1944. As Govt is only a formal party, it is not necessary to sanction the defence of the appeal also. The A.G.P. may be directed to urge the same grounds as were urged in Govts written statement in the Suit.

1918 RLA. Pmr 21/3/44

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No. 6950

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 25th August 1944.

Subject:- Sanction of defence of C.A.No.145 of 1944.

MEMORANDUM.

With reference to his letter No.283 dated the 2nd August 1944, on the subject noted above, the District Government Pleader, Dharwar, is informed that it does not appear necessary to sanction the defence of the appeal as Government is only a formal party. He is requested however to urge the grounds which have been urged in the Government's written statement in the suit.

R1

o/c for Remembrancer of Legal Affairs.

Issued
28/8

To The District Government Pleader,
Dharwar.

Submitted for signature.
28/8 A.P.A.P. 28/8

Submitted after issue.

file in S. Docs 3/43

2QC
24/8

A.P.A.N
24/8

Copy was applied for on the ( )
dayof April 1946.

Record Keeper.

It was ready for delivery on the ( )
day of April 1946.

Record Keeper.

It was delivered on the ( )
day of 1946.

Record Keeper.

Received on -
Registered on -
Decided on -
Luration -

In the Court of the Assistant Judge, Dharwar.

At Dharwar.

Appeal No. 14[illegible] of 1944 from decree in Civil suit No. 453 of 1942 of the Court of the Joint Civil Judge, Senior Division of Dharwar (Mr. A.C. Sequeira)

Pleaders.

r. Jamkhandi.

Sankappa Bharamappa Alur of Betgeri Taluka Gadag.

.... Appellant.

(Original Plff).

against

r. N.K.Lixit.

1. Ramsing Durgasing ~~xxxx~~ Phulani alias Rajput of Betgeri, for himself and for and on behalf of the Rajput Community of Betgeri, Taluka Gadag.

t.B.B.S.Sawkar.

2. The Province of Bombay.

3. Dod-Basappa Mudakappa Alur of Annigeri -- Taluka Navalgund. ..... Respondents.

(Original Lefts).

Claim :- Rs 5/- for both Court fee and jurisdiction.

Judgment

This appeal arises out of a suit brought by the plaintiff appellant to obtain a permanent injunction for restraining defendant No.1 from obstructing or interfering with the right of way of the plaintiff to pass from the Betgeri road through C.T.S.No. 6553/2A along its southern boundary to C.T.S.No. 6553/1 and R.S.No.23. Plaintiff alleged in the plaint that he and his Bhavubands owned R.S.No.23 of Betgeri. Plaintiff owned a part of R.S.No.23 and he also exclusively owned C.T.S.No. 6553/1. Plaintiff further alleged that R.S.No.23 was owned by him and his ancestors from times immemorial. C.T.S.No. 6553 belonged to the Government (defendant No.2). From the very beginning plaintiff and his ancestors had been passing through C.T.S.No. 6553/2 to go to the lands R.S.No.23 and C.T.S.No.6553/1 from times immemorial. It was alleged that plaintiff and his ancestors being occupants of the said lands R.S.No.23 and C.T.S.No.6553/1 under Government, were entitled to the right of way through C.T.S.No.6553/2 as an easement of necessity as there was no other way to go to their lands. In the alternative plaintiff claimed to have required by user for the prescriptive period an easement to pass through C.T.S.No.6553/2 to go to his lands C.T.S. No. 6553/1 and R.S.No. 23, Plaintiff added that defendant No.2 the Provincial Government granted a portion of C.T.S.No.6553/2 which was given C.T.S.No.6453/2B to the Rajput community of Betgeri in about 1926. Then in the year 1936 defendant No.2 sold C.T.S.No. 6553/2A to defendant No.1. Plaintiff alleged that after the grant in 1926, plaintiff was passing through - C.T.S.No.6553/2, that is along and within the southern boundary of C.T.S.No.6553/2A to go to his lands C.T.S.No.6553/1 and R.S. No.23. It was alleged that the revenue authorities were bound to accept the plaintiff's right of way when C.T.S.No. 6553/2A

45-7-45

revenue authorities to the contrary were illegal and ultra vires of them. The cause of action alleg in the plaint ~~xx~~ was that defendant No.1 was -- attempting to obstruct plaintiff in the exercise of his right of way under the mistaken impression that the orders of the revenue authorities conferred on him such a right. Plaintiff alleged that the cause of action arose in the month of April 1942 when - defendant No.1 asserted his alleged right of - obstructing the plaintiff in the exercise of his right ofway and when he tried to obstruct him. The suit was filed against defendant No.1 Ramsing Durga Phulani for himself and for and on behalf of the - Rajput community of Betgeri and against defendant N the Provincial Government . It was stated in the plaint that defendant No.2 was joined as formal pa to the suit. On the contention of defendant No.1, defendant No.3 was made a party defendant though it was stated that he had no interest in the subje matter of the suit.

The suit was reisted by defendants Nos. 1 and They denied plaintiff having acquired the right of way as claimed in the plaint. Defendant No.1 denie plaintiff's or his ancestors' having ever passed - through C.T.S.No. 6553/2 or along and within the southern boundary of C.T.S.No.6553/2A. Defendant 1 denied the ownership of the plaintiff of C.T.S.No. 6553/1. The defendants contended that the suit wa barred by limitation. There were other contention raised by defendant No.2 but it is not necessary t state them for the purposes of this appeal.

On these pleadings issues were raised in the lower Courtat Ex.31. The following are the materi

material issues which were considered by the lower Court:-

1. Whether the plaintiff has acquired an easementary right of way across the suit strip in order to go to his land S.No.23 and S.No6553/1 ?
2. Whether that right has been enjoyed either from time immemorial or during a statutory period of 60 years ?
8 Whether the plaintiff's right of way is an easement of necessity ?

The lower Court found all these issues in the negative. As regards defendant No.1 contentions that plaintiff was not the owner of C.T.S.No.6553/1, the lower Court held that the plaintiff had recently purchased the land from the Government. It was found unnecessary to record any finding on the defendants' contention that the suit was barred by limitation.

It will thus appear that the principal question -- which was considered in this case by the lower Court was whether the plaintiff had got or acquired a right of way as claimed in the plaint. The right claimed in the plaint is to pass along and within the southern boundary of C.T.S. No. 6553/2A for going to C.T.S.No. 6553/1 and R.S.No.23. -- From issue No.8 raised in the lower Court it appears that the plaintiff claimed the said right of way as an easement of necessity. The reason why plaintiff claimed the said right of way as an easement of necessity was that plaintiff and his ancestors were occupants of R.S.No.23 and C.T.S.No.6553/1 under Government and there was noother way for the plaintiff and his ancestors to go to their lands. It was not alleged that there was transfer of immoveable property by one person to another or there was partition made of a joint property of several persons. What plaintiff seems to have alleged is that his title to R.S.No.23 and C.T.S.No.6553/1 was a derivative one under the Provincial Government. R.S.No.23 is held by the plaintiff-

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with carts, cattle etc.. If plaintiff wanted to establish a right of way to pass with carts, cattle etc.. it should have been specifically stated in the plaint. It is true that when an alternative way is extremely impassable it almost amounts to saying that the way claimed as a way of necessity is the only available way to the claimant and that way of necessity claimed should be granted. It will be shown hereafter that the Rajput Galli passage is not so impassable as alleged by the plaintiff even if it is assumed that the plaintiff had alleged a right of way to pass with carts, cattle etc.. to go to his lands. It seems that plaintiff claimed an easement of necessity under section 13 of the Indian Easements Act thinking that an occupant of an unalienated land is entitled to a right of way over the adjoining government land as an easement of - necessity. The lower Court was therefore right in holding that plaintiff was not entitled to an easement of necessity.

In the lower Court an issue about acquisition of right claimed by immeorial user was raised. For acquisition of an easement by immemorial user plaintiff must show enjoyment on his part and on the part of those through whom he claims of such a character and duration as to justify the -- presumption of a grant or other legal origin of the -- plaintiff's right. Vide Chintamanrao v. Ramachandra -- (34 Bom. L.R. 92). Now it will appear from the averments made in the plaint that the plaintiff had not claimed acquisition of an easement by immemorial user. It was necessary for the plaintiff to allege that there was immemorial user from which the presumption of a grant or other legal origin of the plaintiff's right could be made. What plaintiff - alleged was that C.T.S. No.6553/2 belonged to the Government - and plaintiff and his ancestors were passing through that land to their own lands R.S.No.23 and C.T.S.No.6553/1 from times imme It was then alleged that plaintiff and his ancestors, being

as an occupant. Government have not transferred any existing rights in favour of the plaintiff by recogn ing him as the owner of R.S.No.23. From the evidence led in the case it appears that C.T.S.No.6553/1 was purchased by the plaintiff from the Government.- Plaintiff however alleged that he owned C.T.S.No. 6553/1 from the time of his ancestors. It is thus apparent that the case does not g fall under section 13 of the Indian Easements Act. It is not the case of the Government having made an inam grant of some lands in which case there would exist an easeme... of necessity in respect of irrigation rights. An instanc of easement of necessity which could be claimed agains the Government is mentioned at page 140 of the Amin and Sastri's law of Easements, 1940 edition. It is observed that where Government made an inam grant of 339 acres of land of which 106 acres were under wet cultivation , the right to take water for irrigating 106 acres but not more passed as an easement of -- necessity . In the present case there being gran or transfer, the provisions of section 13 of the - Indian Easements Act are inapplicable. Moreover -- defendants had pointed out in their written statement that plaintiff had a way though the Rajput galli- to the south to go to R.S.No.23. Ex.73 is a hand - sketch showing the respective portions of R.S.No.23 and C.T.S.No.6553/1. The Rajput Galli passage is sho in Ex.73 as marked 7-8-9. Plaintiff's case was that this way was inpassible as the mosque (No.6) was projecting towards the passage with the result tha there was not sufficient space to pass with carts cattle etc.. It will arpear that in the plaint th right of way was not specifically claimed for pa

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occupants of the said lands K.S.No.23 and C.T.S.No.6553/1 under Government and there being no other way to their land were entitled to a right of way through C.T.S.No. 6553/2 as an easement of necessity.. It will thus appear that the claim made in the plaint was principally based on an easement of necessity. No doubt it was stated that plaintiff and his ancestors were passsing through C.T.S. No. 6553/2 from times immemorial. This statement of fact was made in the plaint to show that the easement of necessity claimed existed from times immemorial as Government owned C.T.S.No. 6553/2 from the very beginning Then plaintiff claimed in the alternative ~~xxxxxxxxx~~ an easement by user for prescriptive period. It was not alleged in the plaint that plaintiff had acquired an - easement of necessity or in the alternative an easement by immemorial user or in the alternative an easement acquired by user for prescriptive period. From the plaint it does not appear that three distinct alternative cases were alleged. It is therefore difficult to hold that plaintiff had made out a case of acquisition of an easement by immorial user in the plaint. However as an issue was raised in the lower Court it will be necessary to consider that asrect of the question in appeal.

It was contended by the learned pleader for the respondents that according to the averments in the plaint plaintiff had not made out a case of acquisition of an easement. It was pointed out that according to the - averments in the plaint there was no defined way used by the plaintiff and his predecesor-intitle till 1926. It was only after 1926 that a defined path way came into existence along and within the southern boundary of - C.T.S.No.6553/2A, according to the averments in the plaint. The learned pleader for the appellant contended

contended that plaintiff had in the plaint alleged that the said right of way wasbeing used from the time of his ancestors. In para 3 of the plaint it was stated that plaintiff and his ancestors were passing through -- C.T.S.No. 6553/2. It was not stated that there was a defined path way- . C.T.S.No.6553/2 is an open unenclosed piece of land abutting on the public road to the east. It is possible to enter that land from the public road at any place. In para 3 of the plaint it was not stated that a defined path way existed in a particular portion of C.T.S.No6553/2. According to the plaint, C.T.S.No.6553/2B was given to defendant No.1 in the year 1926. Plaintiff therefore stated in para 4 of the plaint that since that time he began to pass along and within the southern boundary of C.T.S.No. 6553/2A. Thus from the averments in the plaint it is clear that before 1926 there was no defined path way existing. The learned pleader for the appellant relied on Haridas Ghose v. Gouri Charan (A.I.R. 1924 Calcutta 359(2), in ~~xxdtxx~~ which it was held that even when there was no regular defined pathway a right of way could be acquired as an easement. This is true but it was necessary for the plff to allege that there existed at least two termini. In the Calcutta case cited by the learned pleader for the appellant it was observed that if plaintiff had stated the two termini of the pathway they claimed, their suit ought not to fail simply on the ground that the pathway passed over a piece of waste land in different tracks. It is apparent from the acerment made in the plaint that till 1926 there was neither a defined pathway nor existence of two termini. On the contrary it appears from the averments in paras 3 and 4 of the plaint that plff and his ancestors used to enter C.T.S.No. 6553/2 at any point towards the east from the public road and they used to go to C.T.S.No.6553/1 and R.S.No.23. ~~Xxxxx~~ Thus there was no defined pathway nor the two termini before 1926 in order to enable the plff

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to claim a right of way by immemorial user or by prescription. Hence according to the averments in the plaint plaintiff is not entitled to the right of way claimed.

It will now be necessary to considerwhether from the evidence on record it can be held that plaintiff has acquired an easement by immemorial user or by prescription. In this connection a question of law arises for consideration. Issue No.2as raised in the lower Court was whether the righthad been -- enjoyed either from time immemorial or during the statutory period of 60 years. This issue was raised as C.T.S.No. 6553/2A is now owned by deft No.1. It was necessary for the plaaintiff to snow enjoyment for a period of 60 years within two years of the institution of the suit. Reliance was placed on Ram Prasad v. Lalit Kishore (A.I.R. 1942 Allahabad 405). Contrary view is expressed in Srinivasa Upadya v. Ranganna Bhat (I.L.R. 41 Madras 622). An easement claimed under section 15 of the Indian Easements Act is inchoate -- till decided by a Court of law. An inchoate right- cannot mature into a full right on transfer of owners by Government to a private individual. Conversely an easement enjoyed for 20 years cannot become an -- inchoate right on transfer of ownership by a private individual to Government. If after the transfer - by the Government to a private individual 20 years' - enjoyment has taken place , the case will fall under- section 15 of the Indian Easements Act. In other cas 60 years' user should be established. In the present case deft No.1 purchased C.T.S.No. 6553/2A in the year 1936. Till 1936 the right was an inchoate one. After 1936 there was no enjoyment for a period of 20 years. Plaintiff must therefore establish enjoyment

for 60 years against deft No.1 in order to claim an easement under section 15 of the Indian Easements Act. - I prefer to follow the Madras view x in preference to the view expressed by the Allahabad High Court.

The oral evidence led by the plaintiff to show enjoyment for prescriptive period or immemorial user was meagre -- and unsatisfactory. Plaintiff examined himself at Ex.82. He stated his age as 38. He could not have therefore deposed about acquisition of easement by immemorial user. Plaintiff examined one Shiddappa (Ex.84) who stated that he was 97 years of age. According to this witness plaintiff was using the said passage from the time of his ancestors. What the witness meant was that the passage along and within the southern boundary of C.T.S.No.6553/2A was used by the plaintiff from the time of his ancestors. One Mallangouda (Ex.85) who was cultivating plaintiff's land R.S.No.23 for 8 or 9 years stated that he was passing near Balaji's temple. Balaji's temple situated in C.T.S.No.6553/2B to the south of Dharmashala. Last witness examined was Fakirappa (Ex.86). He stated like Ex.84 that plaintiff was using the suit passage Now it will appear from the averment in the plaint that the suit passage came into existence after 1926. Before that, -- according to the averment in the plaint, plaintiff and his -- ancestors were passing through C.T.S.No.6553/2. Thus according to the averment in the plaint there was no defined pathway before 1926. The lower Court therefore declined to place any reliance on the oral evidence of the witnesses (Exs. 84 and 86) . It appears that in the year 1925 the Government wanted to dispose of C.T.S.No.6553. One Bharmappa Alur and three others applied to the Collector Dharwar on 24/4/1925 requesting that C.T.S.No. 6553 should be sold to them. They stated that they owned R.S.No.23 to the west and they were using water of the well in C.T.S.No. 6553/1(Ex.99). In Ex.99 the applicants mentioned six grounds for the sale of C.T.S.No.6553 being made - in their favour. It was however not stated in Ex.99 that there was

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a right of way through C.T.S.No.6553 to go to R.S.No. 23. Plaintiff did not admit that Bhara appa Alur- one of the applicants in Ex.99, was his predecessor-in-title . In Ex.64 which will be referred to in detail presently, plaintiff had stated that he and one Basappa were the heirs of one Bharamappa Alur since deceased. Thus at the earliest stage when it was necessary for the plff's predecessor-in-title to have stated that there existed a right of way through C.T.S.No. 6553, we find that in Ex.99 no such right of way was claimed. Then C.T.S.No.6553/2 -- was given by the Government on certain donditions - to a Rajput Sadhu. On 9/4/1934 plaintiff applied to the Collector of Dharwar complaining that the said the said Rajpur Sadhu had not complied with the - conditions of the grant. It was alleged that after the death of the said Sadhu the Rajputs encroached upo the plaintiff's land and had come as far as well.-- It was further stated in Ex.64 that the petitioner in Ex.64 only desired that the Rajputs should restrict themselves within the four corners of 24 gunthas and that they should not disturb the petitioner's peaceful enjoyment of the user of the well in C.T.S.No. 6553/1. As a result of this application an order dated 11th March 1935 was passed by the Collector for resumption of the land given to the Rajput Sadhu (Ex.63). It appears from Ex.63 that by that time a Dharmashala and a temple had already come into existence on the south part of C.T.S.No.6553/2. Ex.48 is the Inspector Note prepared by the trial Court. From Ex.48 it will appe that the Dharmashala was situated on the northern bor of C.T.S.No. 6553/B. By Ex.63 it wasdirected that t portion on which there existed a temple and a Dharmas should be sold by public auction. Thus C.T.S.No.6553

C.T.S.No.6553/2A was to be sold. Plaintiff then applied on 13/6/1936 by Ex.68 to the Collector ,Dharwar claiming a right of way in C.T.S.No. 6553/2. It will thus appear that the right of way was not claimed till C.T.S.No.6553/2A was put to sale by the Government. In July 1936 defendant No.1 purchased this land. Plaintiff realized that the land would be purchased by defendant No.1. He therefore made the application (Ex.68) a few days before the land was actually purchased by defendant No.1. After the land was purchased by deft No.1 on 19/8/1936, plaintiff applied to the Collector, Dharwar, requesting that the Rajputs be asked to allow the applicant to use the way in the said site now auctioned before they were given possession of it. By this time according to Ex.63, the plaintiff had purchased C.T.S.No.6553/1 from the Government.-- In the application dated 19/8/1936 , plaintiff stated that originally when the site was granted by the Government to the Rajputs Sadhu his ancestors used the right side of Balaji temple for their way. This alleged way is to the south of the Dharmashala in C.T.S.No.6553/2B . Then it was stated in that application that after the Sadhu died, the Rajputs headed by Ramsing obstructed the applicant and his ancestors from using this site for way by erecting a fence and making a garden within. Thus it is clear that according to the averment in this application, before 1926 a passage on the right side of Balaji temple in C.T.S.No.6553/2B was being usedbut after 1926 that way was stopped as the site was enclosed and a garden was made within. Plaintiff therefore stated in the application that he used to pass close by the small Maruti temple since that time. The Maruti temple is also in C.T.S. No. 6553/2B. Plaintiff then stated that some time ago when the Rajputs built a Dharmashala even this passage used by the applicant was closed. Finally plaintiff stated in that application that " Thus harassed by the Rajputs from time to time all the while, the applicant has been now using the only open site now auctioned

for his pasage to his land ". The averments made - in this application clearly show that the suit passage came to be used by the plaintiff after the Dharmashala- came into esistence several years subsequent to the gra in 1926. Vefore that time according to the averments in that application different ways in C.T.S.No.6553/2B were being used by the plaintiff. It is necessary to refer to these averments made in the application dated 19/8/1936 to show that the oral evidence led by the - plaintiff is unsatisfactory. The witnesses referred to the suit passage. Ex.94 stated that the plaintiff and hi ancestors used the suit passage. But the recitals in the application referred to above show thatbefore 1926 and s years after 1926, some pasage in C.T.S.No.6553/2B was us As this passage was stopped and as plff had taken no action in the matter, it was not possible for him x to- have claimed a right of way in C.T.S.No.6553/2B.-- He therefore stated in the plaint vaguely that before 1926 he and his ancestors used the pasax through C.T.S. No. 6553/2 without stating a defined passage and the two termini. After the land was sold in the year 1926, the averment in the plaint ead with the revitals in the application referred to above show that the suit - passage came into existence in the year 1926. At any rat it is clear that the suit pasagge with the two termini marked A B by the lower Court was not used since times immemorial or for a period of 60 years or 20 years endin within two years prior to the date of the suit. Thus from the oral evidence it is not possible to hold - that plaintiff had acquired a right of way claimed by hi

The learned pleader for the appellant howver contend that in this case there were probabilities to be - considered. He pointed out that C.T.S.No. 6553/2 abutted

abutted on the public road; it was an open, unenclosed piece of land abutting on the public road to the east and hence it was quite probable that plaintiff must have used that land for passage to go to his lands. Plaintiff's witness Shiddappa (Ex.84) conceded that there were prickly pears over C.T.S.No. 6553/2 before the temple and the Dharmashala were built. Hence though C.T.S.No.6553/2 was an open unenclosed piece of land, it was difficult to have a passage though it is as it was Government waste land. Plaintiff's another witness Mallangouda who was cultivating the plaintiff's land for a period of 8 or 9 years admitted that he was using the passage near Balaji temple had come into existence and hence it was necessary to provide a road to the east to go to the temple. It will thus appear from the orders passed by the revenue authorities that a passage ten feet in width had to be provided in C.T.S.No.6553/2B. The witness did not state that he had used the suit passage along and within the southern boundary of C.T.S.No.6553/2A. On the other hand defts pointed out that plff had a way by Rajput Galli and as it was nearer the village and more convenient plaintiff used that way to go to R.S.No.23. Plaintiff'scase awas that Rajput Galli passage was impassable. The lower Court had made local inspection of the place. The lower Court observed that the width of the Rajput Galli mar ed C D was 8 feet between house (No.16) and the mosque (No.6). It was therefore contended that a cart could not be taken over a passage eight feet in width. The lower Court observed that a cart could pass across the road way eight feet width. It is true that within a width of eight feet it is not possible for cart to take a turn. But the road marked No.9 is quite wider. It was suggested that there were certain trees which obstructed the entry of a cart from the passage eight feet in width to the further passage from west to east which is much wider. From the evidence it does not appear that any tree existed on the termination -- of the passage eight feet in width. Thus plaintiff had a passage through the Rajput Galli and certainly it was the most convenient passage for him to go to R.S.No.23. Plaintiff owns strips Nos. 4,5,

and 6 of R.S.No.23 . Strips Nos. 1,2 and 3 of the sai land are owned by the Bhavubands of the plaintiff. The present suit is filed by the plaintiff alone. It is therefore apparent ~~xxx~~ that the bhavubands of the plaintiffs owning strips Nos. 1,2 and 3 of R.S. No. 23 must be going to their respective strips.- Nos. 1, 2 and 3 of through the Rajput Galli. Thus it isnot possible to accept the contention that as - C.T.S.No.6553/2 was a vacant unenclosed piece of land plaintiff and his ancestors must have been passing ov it to goto their land R.S.No.23. Moreover C.T.S. No. 6553/1 did not belong to plaintiff. Plaintiff relied on Ex.81 R a Pacca book of 1845 to show that - C.T.S.No. 6553/1 was part of S.No. 23. S.No.23 bore original S.No. 129 (Ex.80). In Ex.81 it was stated that the well should have been included in S.No.129 and it shouldhave been measured accordingly instead of including it in the revenue S.No. 130 . It was not that according to the note made in the Pacca book (Ex.81) the well was included in the revenue S.No.12 The earliest record shows that the well was included in the C.T.S.No.6553. It cannot therefore be disput thatC.T.S.No.6553/1 belonged to the Government. -- Plaintiff who had purchased C.T.S.No. 6553/1 from th Government is precluded from saying that it origina belonged to him. Thus it will appear that between t plff's land and C.T.S.No. 6553/2B there existed - C.T.S.No. 6553/1. It was possible tbx have a direc approach to R.S.No.23 from the south via Rajput Gal oad. I therefore think that the road to the south more convenient and hence the probability is that pl and his ancestors must have used that road for goin to S.No.23. I was however contended by the learned pleader for the apellant that in the deft's state- ments before the revenue authorities (Exs. 89,90

dated 31/7/37, 12/2/37 and 3/4/1939 respectively , existence of this alternative way was not stated by deft No.1. In these statements deft No.1 was refuting plaintiff's claim to a right of way through C.T.S.No.6553/1. Itwas not necessary for deft No.1 to show that plff had got a way via Rajput Galli This fact must have necessarily come to the notice of the revenue authorities and it was not necessary for deft No.1 to say -- so in these statements referred to above. Ex.71 is an order dated 4/10/1939 passed by the Collector,Dharwar. In that order it was stated that " Besides it is found on enquiry that Mr. Sanka is the occupant of C.T.S.Nos. 6552,6553,6548 and also S.No.23 as shown in the sketch drawn by the District Inspector of Land Records and there is a clear road (named Rajput Galli) to the south of C.T.S.No. 6553 which touches Mr. Sankappa's land ". -- Hence it was not necessary for deft No.1 to point out the existence of the Rajput Galli way in his statements referred to above. Reliance was then placed on an order dated 14/2/1938(Ex.69) passed by the Collector, Dharwar , in which it was stated that the Rajputs agreed toallow Mr. Sankappa Bharamappa Alur the owner of S.No. 23 of Betagéri a right of way to go to S.No. 23 along with the boundary of C.T.S.No. 6553/2A on the northern side. It appears that the Collector wanted to get the matter amicably settled -- before deft No.1 could be put in possession of C.T.S.No.6553/2A. Hence it was proposed that plff should be given a way on the northern boundary of C.T.S.No.6553/2A. Plaintiffdid not accept this -- offer. It does not mean that deft No. 1 accepted the plff's right to pa passage through C.T.S.No6553/2. Ex70 is an application dated 16/4/1938 madeby the plaintiff to the Collector, Dharwar. In this application plaintiff stated that the Rajputs should be directed to allow him the right of way as per their admission before the - Collector at the time of his visist i.e., along the boundary line of C.T.S.No.6553/2A towards the northern side. This application shows that plaintiff subsequently thought discretion was better part of valour and he even agreed to accept the way suggested by the -

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Collector. It cannot therefore be held that deft No.1. admitted plaintiff's right of pasage through C.T.S.No. 6553/2A. It will appear from Ex.70that plaintiff referred to the reasons stated in his applic tion date 19/8/1936 for having a right of way to C.T.S.No. 6553/ The reasons stated in para 7 of the application dated 19/8/1936 for having a right of way to C.T.S.No.6553/2 were : (1) that the Rajputs were bound to give him a right of way on account of the conditions originally imposed upon them at the time of the grant, (2) by the own admission on 24/5/1934 (3) Commissioner's order dated 18th August 1935. It was not shown that when C.T.S. No. 6553/2 was given to the Rajput Sadhu a -- condition was imposed that plaintiff should be allowed right of way as claimed in the plaint. The statement dated 24/5/1934 of the Rajputs is not on record. -- The Commissioner's order was that the sale of C.T.S. No. 6553/1 was confirmed subject to the condition that the owner of C.T.S.NO. 6553/2 should be allowed to use the water of the well. This condition was not - in favour of the plaintiff at the well but in favour o the owner of C.T.S.No. 6553/2. It is important to not that in stating the reasons how the plaintiff was enti to a right of way in C.T.S.No. 6553/2, it was not stat that my immeorial user plaintiff had acquired a - right of way.

Reliance was placed on the observations made by the Collector in his order dated 4/10/1939 (Ex.71)- in which it was stated that the plaintiff was passing through the sites A and B to his field in S.No.93. whe they were open Government lands. It is not known what material the Collectorhad before him to make this- observation. At any rate plaintiff cannot use this observation made by the Collector as evidence to show that

show that he used to pass through C.T.S.No.6553/2. Thus on a-consideration of the oral evidence and the probabilities of the case it cannot be held that plaintiff has established acquisition of a right of way by immeorial user or by prescription.-- Defts had also led oral evidence to show that plff had not used the passage through C.T.S.No.6553/2. The witnesses stated that it was not possible to go to C.T.S.No. 6553/2 from the - public road as there existed a gutter on the eastern border of C.T.S.No. 6553. It was pointed out that deft No.1 himself had cultivated C.T.S.No. 6553/2A before the order of the resumption was passed and that he could not have done so unless he managed to to that land from the public road to the east. Deft No.1 explained that he kept his cart on the public road and did not take it in the land itself. It is not necessary to discuss the evidence of these witnesses, in detail. The lower Court has accepted the evidence of these witnesses . The probabilities of the case show that the road to the south has been used by the plaintiff. At any rate it is not possible to hold that plaintiff and his ancestors had used a passage - in C.T.S.No. 6553/2A for such a length of time from which a presumption of grant or some other legal origin could be made. Even assuming that plaintiff had to show user fora period of 20 years under section 15 of the Indian Evidence Actit cannot be held from the evidence that from 1922 plaintiff was using the right of way claimed by him.

It was contended by the learned pleader for the respondents that plaintiff was not able to establish the alleged user as of right. The learned pleader for the appellant contended that the user should be presumed to be as of right. It is not in all cases that a presumption " as of right " from user could be made. In this case it is apparent that C.T.S.No. 6553/2 was the Government waste land. Having regard to the habits of the people of this country it is evident that user, if at all made, must have been made not with the animus of aquisition of an easement right but with

the idea that it was a Government land and that nobo would raise any objection to the plaintiff passing through it. Before the presumption as of right - from user could be made, the natureand character of the servient tenement must be considered. In thi case it is apparent that as C.T.S.No. 6553/2 was a- Government waste land there was none who could objec the plaintiff passing over it. If passing was objec by anybody he could have said as that this was Gover land and unless somebody on behalf of the Government objected he was entitled topass over it. Moreover i will appear that there was no defined path way. he there is no defined path way in an extensive land it cannot be said that the user was being made as of right. Of course there was no direct proof th t the enjoyment was with the permission of the Covernment. But the Court can infer that if the plaintiff was obstructed by any officer of Government, he would have asked his permission forpassing through the la Hence in this case even if it was established that plaintiff was passing through C.T.S.No. 6553/2A it could not be held thatthe user was as of right.--

Thus the principal question to be considered in this appeal whether plff had acquired a right as claimed by him should be found in the negative. -- It is therefore not necessary to consider the quest of limitation raised. The learned pleader for the respondents contended that the revenue authorities on enquiry rejected the plaintiff's claim of righ way under section 37 of the Bombay Land Revenue Co and hence plaintiff should have filed his suit witl one year from the date of the decision of the reve tribunal. The plaintiff's present suit is to rest

restrain deft No.1 from obstructing him in the exercise of his right of way. Moreover the revenue authorities had not decided that plaintiff had not got the right of way claimed by him. There was no regular inquiry being made under section 37 of the Bombay Land Revenue Code. The Government was disposing C.T.S.No. 6553/2A. Plaintiff requested for a right of way. There was no decision that plaintiff was not entitled to a right of way claimed. Hence it would have been difficult to uphold the contention advanced by the learned pleader for the respondents that the suit was barred by limitation as plff had no brought his suit within one year from the date of the order of the revenue tribunal. However as plaintiff appellant fails on the principal question considered above it is not necessary to record any finding on the question of limitation.

Result is that the decree passed by the lower Court dismissing the suit is correct. It should be confirmed and the plaintiff appellant's appeal should be dismissed with costs.

Order

Appeal is dismissed with costs. Two sets.

27th March 1946.

Sd. N.C. Vakil.
Assistant Judge.

Grounds of Appeal

1. The decision of the trial Court is contraryto law and the evidence in the case.

2 .The trial Court erred in not properly appreciating -- the pleadings in the case.

3 The learned Judge ought to have held that appellant was the owner of S.No. 6553/1 even prior to his purchase and his -

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explanation as to the purchase ought to have been -- accepted. In substance, it was a confirmation of his title and not a fresh acquisition thereof.

4. The documentary evidence in this connection has not been referred to at all by the trial Court.

5 The lower Court erred in observing thatthere was any inconsistency in the plaint and the evidence at the trial.

6 The evidence in the case has been approached from a entirely wrong point of view.

7 Significant admissions in the evidence of deft and the conduct of deft himself are ignroed.

8 It may be noted that deft Ramsing never stated at any time before the Revenue Authorities that appellant was passing through the Rajput Galli road or that it was physically impossible to use the passage A.B. This - omission on his part clearly shows that the present defence is an after thought and untrue.

9 The witnesses for the deft have admitted that S.No. 6553/2A and 23 could be cultivated only by passing from the road . Deft himself admits thatthe said number was cultivated by him, but curiously enough, he does not know which passage his tenant used, nor does he mention the name of the tenant, nor is he examined.

10. The trial Court erred in making unwarranted assumptions and then basing its conclusions thereon.

11. S.No.23 is admittedly the ancestral land of- appellant's family and their ancestral house is in -- another part of Betgeri and not in Rajput Galli. -- Their shifting to Rajput Galli some 30-35 years ago -- is absolutely irrelevant in determining the question at issue.

12. The depression on the side of the road is wrong

wrongly stated to be a drain. F rther, the depression is neither abrupt, nor so deep as to render it impossible for the passage of carts. This will be clear from deft's evidence itself.

13. The reference to the construction of a bridge etc.. is unsound and based on entire mis-apprehension of the condition of agriculturists and agriculture as well.

14. The trial Court ought to have held that the alleged Rajput Galli passage was no passage at all, to S.No.23 and in view of the Tamarindtree, and the Bari tree, which was very recently cut down, it could not have been used at all as a passage.

15 . The measurements etc.. shown by the trial Court in its inspection note appear to be approximate, and even assuming that the width is 8 feet,it would be absolutely insufficient for the passage of carts laden with doffer etc..and other - agricultural implements.

16 The learned trial Judge erred in observing that appellant would not have allowed himself to be foiled. He has been taking steps as advised from time to time, and has been insisting from the beginning that he has a right of passage from the road to his land.

17 The lower Court erred in trying to explain away the admission of the Rajputs solemnly made before the Collector and stated by him in his orders. So the working of the order is too clear and the trial Court erred in observing that it was only for access to the we

18 The learned Judge has missed the significance of Ex.91 and the other applications and statements of deft Ramsing. He does no say that appellant was using the alleged Rajput Galli passage, and has no right of way, and xxx this omission on his part gives a lie to his present defence.

19 The findings on issues Nos. 1,2 and 8 are wrong.

20 The evidence led for appellant ought to have been accepted by the trial Court.

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21. Proper presumptions and inferences are not drawn and probabilities are not properly appreciated.

22. The claim of the appellant ought to have been decreed.

Typed by, Read by, Compared by,

True Copy

Clerk of the Court.

ఆకేలు సోళశుభద్రకరలు కార్యలయ

(ఆరగకరణం కొ.పో.)

(స్థానిక సంబంధకర్తృత్వంలో)

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దీ)

కుశలము నామేయము

ప్రాకారాత్ యిల్లుంటి ఆకేళ్ళంటు జబ్బు-శోండలోగడ్లు-
మధ్యం-ప్రాకారాత యిల్లు నాలు

ఆకేలు లోకశదలు నంబరు గరుగ్యకంగ గడ్డరనోకి క్రింది

1. శంకర్జ్-బ్రకరుల్ల ఆలూరు రంకన్ను — భిన్నాలు లంకాయుతు } ఆకేలోడు
శోత్రిది శిరాదాన చోటుగరి ——— } సోదలనే
నాని.

శిరుదబ్బి

1. రాగుశంగ - ~~xxx~~ సుబ్బాశంగ భ్రూలుంని బుక్రైర్ రభకరూంత.
రంకన్ను. రభకరూంత చ్యాకారం సోగు చోటుగరి. యివరను
ఆశ్న తబ్రైగిబిరాలు మూడు చోటుగరి యిల్లు బుక్రైర్ రభకరూంత.
భ్రూతాంలు చరత బ్రైగ్నిరాలు
2. వి. బ్రాహ్మిన్ను ఆబ్జ్ బాంబ్ —
3. మూర్తి బదబ్జ్-రుబదకోబ్జ్ ఆలూరు రంకన్ను లంకాయుత భ్రూలిరా
నాను ఆగ్లుగరి ఆగ్రాన్ రంకలుగుంద

శిష్యాంతరీయ
సోదలనే
ప్రతిపాద
యివరు.

ప్రాకారాత్ యిల్లుంటి భ్రూలుంటు పోలీసాయిలకు తుమ్మి జబ్బ యివర
శోండలోగడ్డ రంగనాథగుడియింటి లాల్చిలంబర భగవద్దర్శనాలు
భగవద్భక్తుల ఆంధ్యభవదంన గడ్డరుగడియింటి భ్రూశుంఠాలు లంటి కలత
ధరణి ఆకేలు సోమల కాణోదాదరల్లు లండిరుత్తు.

మేతేదు భవ ఆకేలంటు శంకర్జ్ యివరు ఆరాధలు 99-4-గడిగన్ని
భ్రూశుంఠాలు లంటి కలత ప్రాకారబాత యిల్లుంటి తిప్పి కోలోదిగి ఆకేలు
చూ తిరులుత్తాకి.

ఈ ఆచోలు శంన గుడ్డరుగడియింటి చూ చోటు ఆంగ్లకాశ భగవద్భక్తులు
మిన చిచరన చేసుగుంచున్న-ని ఆకేలు ఆకేళ్ళంటు జబ్బ యివర నుంది ఆకేలోడు
భతబ్రైగినింది లు, భవనుంది చకోల కూడర యివర నచ్చకోలు చద్దలుయు
మాత్రు గగ్గి భిన్నాంతరంలెన భతబ్రైగినిం బా లు, యున్న శే-దిరక్షి.త చకోల కూడర
యిల్లుంటి భిన్నాంతరంలెన భతబ్రైగినిం బా ధరశాఖా చకోలకూడర కాగరి భిన్నాంతరంలు
శ్రీకర కూడర యివర నచ్చకోదల్లు లంచూ భ్రూకారణంతరు బగ్గే బందచ్చర
యిల్లుంటి కూడగే భ్రూశుంకూడువరల్లు బరుత్తు దల్లు — ఆంత్ర యిశోండలోగ
రణాటిల్లు బరీద కారణాగర్భకలు నాని కళ్ళకోలలోగు భ్రూశుంకాలు యగ్న
శిద్ధాంతాలకి యింతకిలన్ను లంనాచరుత్తు ఖచ్చుగ్ధకుంత చాని రద్దు చతకిరుత్తుంది
లంకోళ్ళగే లిలకివీకాంత. యింతకిలాలో తనుంచ చిక్కిన్ను లంచాక కట్టుకోతకిలంటు
శ్రీ గగ్గం రుశాయుగర్భన్ను గగ్గిభిన్నాంతరంలెనలో భ్రూత్తు గగ్గం రుశాయుగర్భన్ను
గగ్గిభిన్నాంతరంలెనలో సోగుత బరీదల భ్రూత్తు భ్రూలు కాంతరుల కళ్ళకోలలోగు
బ్రైగ్నిరాలు కళ్ళకోలలోగు

దుకాంస్తుకాంతా గోదావరిలో

అకేలన చేస్తున్నది -

వివరము	రకము			గత అస్తిపంజరము	రకము			వివరము		
ఎ అకేలన వరుసలు లభించినవి	0	9	-	ఎ అస్థిపంజరకర్తృత్వము లభించినవి	-	-	-	-	-	-
బి అస్థిపంజరకర్తృత్వము లభించినది	-	-	-	బి అట్టి అస్థిపంజరము లభించినది	-	10	-	-	-	-
సి కాళ్ళు తొడలు కాలుచేతులు లభించినవి	1	14	-	సి కాళ్ళు తొడకాలుచేతులు లభించినవి	-	-	-	-	-	-
డి చిన్నాభిన్నస్థితిలో లభించినవి	6	-	-	డి చిన్నాభిన్నస్థితిలో లభించినవి	-	-	-	-	-	-
ఇ ఎలుకలు చిమ్మురు రంధ్రాలు చేసిన కపాలములు లభించినవి	15	-	-	ఇ రంధ్రములు చేసిన కపాలములు లభించినవి	15	-	-	15	-	-
ఎఫ్ కపాలములు లభించినది 1-3-46	10	13	-	ఎఫ్ కపాలములు లభించినది	-	-	-	-	-	-
జి చిన్నమెదడు లభించినవి	-	-	-	జి మెదడులేని అస్థిపంజరము	-	-	-	-	-	-
హెచ్ ఎముకలు లభించినవి	33	12	-	హెచ్ ఎలుకలు మెదడులు లభించినవి	-	-	-	-	-	
మొత్తము	68	-	-	మొత్తము	15	10	-	15	-	-

ఈ కొలతలు లాకలు 9 గంటలకు కనిపించి ఆండర్సన్ పంచనామా చేసిన కొలతలు కనిపించి సంతకములు చేసినవి

ఆకాంక్ష కనిపించిన కనుపించని ఉన్నవి

Sd V. R. Gadagkar (సంతకము) Sd/ N. C Vakil
Assistant Judge
30. 3. 46

అకేలలేని కనిపించిన

అస్థిపంజరము కనిపించిన

ఈ కొలతలు చేస్తున్నప్పుడు నేను కోర్టులో ఉన్నాను కనుక నేను ఈ కొలతలు చేయలేదు కనుక ఈ కొలతలు చేసినవారు ఎవరు అని నేను ఆలోచించలేదు కనుక నేను ఈ కొలతలు చేసినవారు ఎవరు అని చెప్పలేను

ఇట్లు కనిపించిన

Submitted with ref. to orders at p. 4, ante.

It does not appear necessary to issue a G.R. in this case as Govt. did not defend the appeal (vide G.M., L.D. No. 5950 dated 25th Aug. 1944 at flip D). The papers may be filed.

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